

Henry Church's Notes



Vol 8

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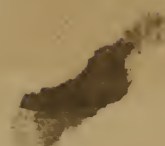
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Contracts

1089
"is an agreement upon sufficient consideration to do or not to do a particular thing" 2 Bl 422-

Raw. J. h. defines it to be a transaction in which each party comes under an obligation to the other & each acquires a right to what is promised by the other - The term includes as well agreements executed - E.g. lease - &c as those which are executory, E.g. covenant promise - there being in both a consent of the parties to the agreement respecting some right or property, which is the subject of the stipulation -

Essent of the parties is the essence of every contract - without it there can be no agreement & of course no obligation created or dissolved - 1 Bar C. 9. 2 Bl 422-

The requisites of a contract are - 1. Parties - 2. Mutual consent to some stipulation - 3. An obligation to be created or dissolved - 1 Bar - 3.

Hence a person non compos mentis or an idiot he cannot regularly make a binding contract - he has no understanding & therefore in legal sight no will - In general contracts not of record made by such persons are mutually void say, Powell & the latter opinion he says is that none of them may be pleaded to them 1 Bar 1112 - 4 Co 123 - 2 Roll 228
Show 152 4 Ba - 37. 4 Co - 123 -

Contracts

that the remainder of a particular estate by a person more
 unimpaired does not destroy a contingent remainder depending
 upon it - strictly void - 1 Paw. 12 - 2 Mace 298-301 - 3 At 536
 2 L. 216. 2 Lev. 284. 2 Vent. 198 Comb. 438. 88 Carth. 11 50. 435
 1 Ch. Ca 118 - See also whether a person can be
 pleaded to such person's deed, 2 P. 228. 3 At 635 - 4 Co 123 -
 8 Tra 1104 - Bull. 172 - The opinions are contradictory -

But

persons insane are incompetent to receive property by a devi-
active title - Ex. Gift - as well as by descent - When being
 it is said a presumed assent to what in common presumption
 is beneficial to the party, with which the law is prima
 facie satisfied - 1 Paw. 12. Co L. 26. 8 Tra 84 - 2 Vent 203 -

Hence

it not be more proper to say that the law in such cases
 dispensed with the assent required in other cases? & if the
 insane devisee or bequeathor his understanding & then
 agrees to the purchase his assent then becomes binding. But
 if he dies during his insanity, or having recovered his
 understanding dies without agreeing to it he the heir
 may avoid it - 1 Paw. 12. Co L. 2 - 2 Vent 203.

But to

contracts made by a person non compos - to alien his property,
 or to create any obligation upon himself there is no such
 presumed assent. 1 Paw. 14 -

It appears to be a rule of the
 C. L. - that the person himself non compos or recovering
 his understanding cannot take advantage of his

Where provisions are made on one side & time given for the other to
accede to them either party during the time given may dissent & put
an end to the matter - 15 C. S. 161

If A employ B. to perform certain services & B. without the privity
of A. employ C. to perform them C. cannot recover of A. 3. Stensley 44
Hornum v. Thorneloe 6 Taunt 147 1. Marsh 500 2. M. 312. Morris
Benedict.

Two concerned in building amidst the promise of one to pay for advances
made will not bind the other the community of interest does not make
them partners 15 Mead 187 - 1. North v. Beresford 11 Pick 247
Hickman v. Stone 4 Cowen 404. Hilder v. Rexford
14 Term 1869

The contents of one nose compass - whether separated or
 separating are placed in the same footing
 as the contents of infants 11-Pick 306. 5 Bams & Cops.
 172. 7 Dowd. & Ry 614 310 - containing 1 Mordya
 1161. 105-

Contracts

for an incapacity, for no person of full age shall disable himself or as is frequently said "stultify himself" - 10 Am-14, 26-
Cro E-398. 622 298- 4 Co 123 1 Port- 21. 3 Ba 87. Litt 405-
See also Bull-172- Stra 1104- 2 Vent-193-

This rule is
framed upon supposed rules of policy to prevent fraud by
pretended insanity - 10 Am 20. 3 Ba 87. 4 Co 100-

In those
may sue his own insanity, 2 Ves, 90-

But after the death of
such non-com person his heirs &c may avoid his
contracts of this description. 3 Ba-87. 4 Co-124- Exch-203-
Cro. E 398-

There are also two modes in which his contracts
may be avoided during his life - 1. In Eq. after office
found upon the writ de Diota in quinculo & the king
may by writs - even during the life of the party avoid
all alienations & other acts in pais of the non-com. during
his incapacity - this office found her relation to the com-
munity of the disability. 10 Am-24- Exch-40- 4 Co 128-
2 Co-170- 3 Ba-28. 1 Ch. Ca 212

2. A writ may be brought in Equity
for the same purpose by the Att. Gen. or committee of the party
and the non-com. should not be a party. 3 Am 20 24 & 114
1 Ch. Ca 112- 1 Ch. Ca-279. 2 Vent-414- 2 P. W. 105 11. 5 Att. 10. 12 All
577.

But if a writ in Equity is brought in behalf of a lunatic to compel
performance of a contract made with him while sane he

1100
1100
Contracts

ought to be a party, for the suit is not brought to strengthen him or to
to the advantage of his incapacity, but to enforce his claim.
- the committee is but his belief - 1 Paw. 239. 1 Ch. Ca. 158 -

If a

Committee makes a contract in a liquid interest he & his
representatives are bound by it 1 Paw 29. 3 Ba. 29 - Dy. 203
4 Co 125 - 2 Lev 412-14 -

Committee & Deeds are bound by contracts
The other persons by deeds & contracts of record - Ex. fines &c -
not avoided by their heirs or in any other way, for no
assentment can be admitted against a record - 1 Paw. 21 -
4 Co 121 - Co L - 247. 10 Co 42 - 3 Ba. 88 - 12. 203 - 1 Ray.

It is said

that one who has any understanding is not an idiot - for an
idiot is one who has no understanding from nature - 13. 324
Co L - 24 - 3 Ba. 21 - 4 Co 125 -

Drunkenness the operating as a
temporary insanity is not itself in Law or Equity a ground
on which one can avoid his contract - it is his own fault. The
rule is founded in policy - but if one party, or ours can otherwise
a state of deep intoxication, & then obtains a contract from a heir
Equity will set it aside - for it is founded in fraud - 1 Paw 20. 336. 131
184. 109. 1 Donb. 62 - 2 Lev. 2102 - 2d ed Bull. 172 con -

If a party, is

of a weak mind that is not per se a sufficient reason for
avoiding his contracts - the law does not distinguish between
the different degrees of wisdom in men except when the party
is non-com - same rule in Equity 1 Paw 20 - 3 Blw 129. 1 Donb. 56. 67

A deed may be avoided for dup. of imprisonment
the insider legit principle 6 ill. 5th 5th 5th 5th 5th
made for insidious purpose Bull 172 13 illine 146
deceit ^{deceit} of imprisonment 2ufft - Wardens A. Ch. Cor 168
13 illine 146 17 de 338 5 Hill 158

A. agreed with B. to furnish him 10 cows for a year
& C. as surety for B. agreed to pay a certain sum for
them in clearing the year A & B agreed that A. should
furnish 8 cows only. Notwithstanding that C. was discharged
11 C. L. 226 the contract being entire - Court divided

Contracts

1803.

sees in Equity, if any fraud or imposition is practiced upon a person thus circumstanced - & if when such a person is a party there are circumstances warranting a suspicion of fraud Equity will relieve on the ground of fraud - Paw 31 2 B W 129. 2 B W - 228.

Upon the same ~~principle~~ general principle - want of capacity, to enter into contracts made by infants & except for necessities are regularly, not binding, & the exception ~~they~~ is founded in necessity only - admitted on no other principle - 1 B W 32. 59.

In judgment of Law there is no distinction
no physical power of assenting to contracts -

The contracts of a feme covert are also regularly void for want of moral capacity, to assent her will being subjected in contemplation of Law to that of her husband - Hence her contracts in general bind neither herself or her estate - But there are other grounds on which her obligations are to be ascertained - her want of property, or of contract or of rights of the husband
1 B W - 59. 112.

When may bind others

If ten and no test agrees to alienate his lands he is bound by his contract tho to the dishonour of the free in test & Equity will compel him to keep a fine & convey according to the contract for the instantane is in his power & tenancies in test are not favored 1 B W - 112 - 1 B W - 171.

The cestuy que
trust of an estate may, by an agreement to which the trustees

Contracts

are not parties bind themselves as well as his own interest & the trustees may be compelled in Equity to join in executing the agreement - for the beneficial interest is in the former - the trustees are mere depositaries of the legal title for his use 1 Pow. 112 - 1 Ch. Cas. 173-208-

A trustee may also bind the estate of the trust, given trust - early conveyance to one having no notice of the trust - for a purchaser bona fide is not to be affected by a right of the trustee of which he has no notice 1 Pow. 112 - 1 W. 735 - 79 6. 47. 663 - 8576 - 1 H. Bl. 334. 417. 1 Pow. 111, 295

So an ancestor seized in fee may by an agreement to alien his estate bind his heir & the better after the former's death may be compelled to convey & the purchase money will regularly go to the 2d - so - for at the time of the contract the estate was absolutely the ancestor - the heir had then no rent of title to it - the purchaser claims is therefore in Equity the prior & better title - 1 Pow. 115 - 28 ex 212 Br. Ch. 648 -

A court of Equity will when the ancestor is only tenant for life decree a specific performance of an agreement made by him against the heir where the agreement at the time of making it was clearly advantageous to the heir - 1 Pow. 115 4 Br. R. C. 235 -

A mother acting as administratrix to her husband may under special circumstances bind her minor children in Equity - 1 Pow. 123 - 14 ex 210 - 1 W. 248 1 R. Bl. 313 - 10 Mod. 160. 243 -

The Chancellor in such cases exercises a discretionary power

If an overseer or a stranger visit a surgeon to
attend a patient then is liable to pay the expense
11 G. L 344

And B. engaged to exchange farms & A engaged to
pay B. so much per acre for the surplus of his
farm provided the quantity was ascertained
in a given time - hold that the time limited
was not of the essence of the contract & that it must
pay on express the the quantity was not ascertained
until after the time limited 2 Paige 173

A person who is indemnified has no right in that
account merely to defend an action & put the
guarantee to answer expense 22 C L 342 but where def^t
consented to M^r & compromised for good title & a suit was
afterwards brought by which the compromise is set aside
then in an action on this contract he might recover the
whole sum paid & his costs as between C^t & def^t
tho he has given no notice of the suit to the C^t
for the effect of such want of notice in a suit on
a good guarantee is to let in proof showing such
compromise unreasonable & when if notice had
been given & C^t had refused to defend it would
have been conclusive 23 C L 106 34 R 374

Contracts

1168-1169

unless directed by from the king the person or persons
of all infants -

So the contracts of a feme before marriage bind
the husband whom she afterwards marries - for as he
takes her property & as the marriage suspends her
original sole liability, he ought to take her covenants
1800. 182- 120 11315- 10 Nov 180-

It is the real estate of a feme
cannot be aliened except by fine or common recovery -
but the agreement of the husband to convey her real estate
if committive by her upon private considerations may be
enforced in Equity - an agreement by husband alone
cannot be - 1800 124-

A tenant in tail agrees to convey &
his issue cannot be compelled to convey, tho he
might have done - they claim from the donor per form-
am done & tho the tenant might have cloaked the entail
yet not having done it his bare agreement cannot deprive
them of their legal rights - 1800 125- 120 208. 1206. 208- 1 Ch-
Ca- 274- Finch 128 120 Ch- 278. 1206. 2. 264- 2 Ven 634. 1200
if the issue receive the considerations for which the ancestor
agreed to convey - the former by this act accepts & takes
the benefit of the agreement & is therefore bound in conscience
to execute it on his part 1800 26 120 Ch 171-

An agreement
by tenant in tail to discontinue the leasing, improvements of
the estate cannot be enforced against his issue after his
death tho it might against himself - Ex - An agreement

Contracts

to sell the timber 1 P. W. 127. 60 E. 50 - De Ph. 174 -

The Executors & Administrators are implied in kinship & successional bound by his contracts of course without being named - 1 P. W. 128. 2 P. 88.

197.

An Attorney being duly authorized may by an agreement bind his client & will not himself be bound 1 P. W. 128 & 2 P. 277. 2 E. 631. 5 B. 3. 654.

But if an Atty. makes a contract in behalf of his client which he is not authorized to make the Atty. himself is bound but not the client. 1 P. W. 128. 2 E. 127.

2u. Can the contract be enforced against him except in Equity? for if the other party should sue the Atty. upon it at law there would be a variance - But might be not be subjected at law as for a fraud or intimer as the case might be or on an agreement implied?

If a joint tenant agrees to alienate his part & dies before the agreement is executed this survivor cannot be compelled to perform it - his claim to the whole is prior to that of the party claiming under an agreement to a part - Seems if the agreement amounts to a renunciation of the jointure is Enfr. the jointure is then destroyed 1 P. W. 129. 2 V. 68. 634. 1 Inst. 59.

Does not the agreement always amount to a renunciation in Enfr. if it is such as being made by a tenant in renunciation in Equity?

L. a surety request the creditor to proceed agt^t the
Principal who at the time is able to pay & afterwards become
insolvent surety is cleared. Such project being tantamount
to a contract not to sue surety & this matter may be
given in evidence under the govt. info 10 March 1872

To make a valid contract it is not only necessary that the mind
of the parties be ⁱⁿ accord but the fact should be communicated
to each other. Ex. One offers, letter to sell, which the other says,
letter accepted but before the last letter is ⁱⁿ ^{re-} ^{ce-} ^{ived}, there
is no valid contract. So if the acceptance is conditional the
offer is not bound unless he consents to the condition

2 Paige 434

Express and implied assent

Express assent is declaredly, & avowedly intended to signify it & may be either precedent concomitant or subsequent to the principal act - Ex. 1. Master sends servant to buy goods -
 2. He buys, himself & promises on delivery to pay, for them
 - 3. Heist buys, servant buys, without any previous authority, & master rectifies it - 1 Paw. 131 -

Tacit & implied assent may arise in several ways - Ex. from silence or inaction - as if a person mortg^g while mortg^g is contracting with another to make a second mortgage & knowing of the contract involuntarily silent - in this case he loses his priority, on the ground of an implied assent that his own mortgage should be postponed - tho he may be postponed in substance on the ground of fraud - but it seems not necessary to impute his silence as fraudulent - 1 Paw. 132
 24 L. 157. 10 W. 393. 1 W. 270. Bowm. 185 - 1 W. 6. 3 B. & C. 457
 1 Ex. 437 into
 As if a person leasing premises when he afterwards leases another lease of the same land to a stranger & knowing the contract makes no mention of his own lease - the second lease being ignorant of the first will even at law be preferred. 1 Paw. 132 - 1 W. 270, 183 - 24 W. 150. 1 L. & C. 455
 24 W. 277. & Chancery will enforce such an implied agreement assent even against an infant since he would practice fraud - 1 Paw. 134 - Barnard 102. 9 -

It has been held that if the first mortg^g is a witness to the second mortgage and it is

Contracts

sufficient evidence of his knowing the contents unless he proves the contrary - 1 Paw 134. 3 Doug 1186 - Denied by Dr. Meadwick & Thurlow - Rule would be dangerous - opportunity for collusion against first mortg^{ee} - § 1060

But to raise the implied agent in the person thus to be affected by it it is necessary that he know not only that his own decision interferes with the subsequent contract but that his silence be voluntary - if forced or caused into silence his interest is not affected by it 1 Paw 134 - § 2.

Upon the same general principle if the holder of a note which has been dishonored omits to give reasonable notice to the endorser he is considered as agreeing to discharge the endorser & to rely only upon the maker - 1 Paw 255. 1 W. 175 - Doug 654 - 6 Ch. B. 98. 122 - 202 - § 259

In general the law will give a tacit agreement whenever it is necessary to give effect to some principal contract founded upon an express agreement. Ex. If one makes a sale of trees growing upon his land he tacitly agrees that the purchaser shall have free ingress, egress & regress to take them - 1 Paw 136 - 2 Bl. 35 - Finch. L. 63 - 60 L. 56 - § 129

There is one species of tacit agreement annexed to all contracts - if either of the parties fail to perform his part he shall pay the other all damages sustained by the non performance - 1 Paw 17, 2 Burr 1011. 3 Bl. 166 - § 43 - 71 -

When one usually employs another to trade for him on trust he tacitly agrees to pay

The money being due on a Bond of obligation on
a diff. termination & per American persons
paid to pay Ice is liable on said Bond
as well as on the Bond 34. to L 22 1 Mar 1860
210 00

A. become bound with & as surety for B. in the same instrument & pay up the obligation he cannot sue B. upon it for it is satisfied - his remedy is in assumpsit for money paid - But if he become bound in a separate instrument & pay, that he is entitled to have B.'s Bond assigned to him & may sue it - So in the first case if B. had separately given Security for the payment of his own debt Bond A. on payment of such joint bond would be entitled to such security & might enforce it ag^t B. - i.e. the security -

8. Cond. Ch. c. 344

particular contract of the same kind that the letter makes
in his name. In every case of proffment release gift &c
there is a trust apart on the part of the feeffe. In ~~that~~ unless
the contrary appears - presumed to apart to whatever is prof-
fered &c. *1 Pow 188. 9.*

So an heir acceptance of property
which demands to him is presumed - So if decedent of
a bill refuse to accept for the honor according to the tenor
but pays for the honor of decedent the law implies an agree-
ment by the letter to repay the amount - *18 Pow 139. Ch. 103*
122. 30. 03. 209. Sum. 1674

So if husband turn away his
wife that amounts to a trust apart on his part to be bound
by her contracts for necessities. *18 Pow 139.*

Upon a sale of joint or
several things an implied warranty by the vendor that
the article sold, *109. 373. Ex. 632 - 2 W. 57.*

What circumstances invalidate an assent given

Ignorance or error will in some cases invalidate an assent
given, *18 Pow 139. 118*

If a mistake or error of one party as to his own
right is occasioned by the fraud of the other the contract is not
binding *[Pow 140.]* but is invalidated on the ground of fraud
[138. 239. 4 Vin. 524. 18 W. 19.] Ex - This induced to believe
that his creditors will was duly executed when it was not
released his right for a small compensation - Release not void

What invalidates an assent given

But if on a doubtful point of right both parties being ignorant on which side it lies a contract is made by which the real party entitled is loser the contract is good for the parties agree upon the ground of the right being doubtful in their minds & knowing that one of them must lose & each voluntarily submits to the risk of being a loser - Ex. Com. even case of compromise between litigant parties 1 Dow-142 - 1 P. 38, 326. 2 Litt-587

But if the party assenting is ignorant of the extent of his right says Rawl-1141 (he must mean of the value of the subject contractable about) & of the means of informing himself he seems not to be bound as the case may be - Ex. - Case of a bequest to a daughter of £10.00 where his orphanage first was £4000 she accepted the former & released the latter - Release set aside. 2 P. W. 316 2 Dow-200-

In the case of Lansdown vs. Lansdown both parties being deceived by the opinion of another as to their right in question the contract was set aside in equity. - case of schoolmaster 2 Dow-196. March, 364. (not like the case of compromising a doubtful right where both parties agree upon the footing of its being doubtful - here both ^{are} deceived & so proceed - But generally ignorance of law is clearly no ground for avoiding a contract - 1 Beam 2 East 409 & see to the case supra

Wagering contracts are in general binding on the parties at C. L. & it is not essential to the validity of such a contract that the event upon which the wager depends be a contingent -

When one contracts for the purchase of land & the seller
declines executing the contract upon the ground that he
is unable to give a good title & the purchaser
has till to complete or performance or rescission of the
contract if the seller is able at the time of the closure
to give a good title purchaser will be compelled to
receive it & if purchaser then find any thing on the
contract seller must allow interest from the time
a check was demanded & Page 244

Shall initiate all contracts. hence if a special contract be
void on the ground of fraud Off. may disregard it &
bring a writ for the goods sold 6 Johns 111 1 Esp. Cas
430 2 522 1 Com. Contr. 38 vide also 5 Johns 673 11 do
409 8 do 79 - 7 Decret 397

Fraud in the execution of a Bond or other specialty
may be shown in avoidance of it. See on to fraud
in the consideration 4 Mand 473 4 Johns 463 13 do
480 9 Cowen 309. So of failure of consid^r. 2 Johns
179 u 177 -

A. let to B. a part of his dwelling house. B. after entering
 & occupying a part of the term abandoned because A.
 introduced lewd women for the purpose of prostitution
 into the other parts of the house. Held to be a sufficient
 defense to an action for rent. 8 Cow 736 Dyott v

Pandolton 1 Esp 13. Case in 8 Cow 736 said in 5 Phil
 54 to be an express warranty that there must be an entry &
 occupation by the tenant or some deliberate disturbance
 of the possⁿ depriving the tenant of the beneficial enjoyment
 of the premises, to operate as an express warranty or forfeiture
 of the rent.

Tenant is bound to know that he actually knew what
 he professes to sell & that the subject matter of the contract
 be known to both parties to be liable to a contingency
 which may destroy it immediately, yet if the contingency
 has already happened the contract is void 11 Pet 72
 viz 5 Ben 2802.

Land lying at Albany was purchased in
Myer's name for building lots. Roder represented
the surface to be even requiring no grading. That
he paid \$33,000 for it all of which was paid &
known to be by Roder but not by Roder's Wife
that in an action on the bond for the purchase
money Roder might show those facts by way
of reimbursement of damages. 5 Hill 43. 3 do
333 23 Wend 240 1st T Day 250 255 m
2 do 128 5 do 438 2 H do E 471 2 Law R 337
5 Linn 334 14 Port 145 1 Geo 102 2 L R 1118 3
Ba C 423.

What invalidates an agent given.

114633

Sufficient that it be equally uncertain to both parties—
In that case ignorance does not invalidate the agent—
1 Bar. 140. — Cough 37. 2 R. 610. 3 R. 693—

In those cases in which the
agent of an intended purchaser of an estate is invalidated
by erroneous representations respecting the circumstances
or qualities of the subject (there being no fraud in the case)
this distinction is to be observed— If the mistake respects
the circumstances or quality, as has appeared to have been in the
the principal motive to the purchase he is not bound— Ex. l. 115
agreement to buy land & a will said & there goes
to ten streams— 1 Bar. 117, 27 178. 20. 1 R. 400. 2 R. 155—
1 R. 32— It can not be enforced in equity, — Qu. 2 Day

Where if the
mistake relates to a particular which appears not to have
been principally in the contemplation of the purchaser— He
is then bound by his agent & his relief lies in compensation
for difference in value & Equity will enforce the contract
1 Bar. 145, 7

But if an agreement for a purchase the purchaser
makes it an express condition that the subject shall possess
certain qualities or incidents the absence of them will
overrule his agreement not enforced against him— 1 Bar. 150

In some cases the intention
of the parties as to their agent may be inferred from circumstances
& the want of agent may be inferred the same way— Ex. l. 116 of
female slave in the ship of a male & not as a male—
contract void— 1 Bar. 150—

According to Powell if an unincorporated house holds for a price which he could not be worth the value, source want of capital may be inferred & the contract is void. 1 Pow-152. 2d ed. 1858. See Pow-158. 2d ed. 1858. 3-757. There is an implied warranty according to our decisions- 2 Root 427. 2 Sw-120. 52. Contra Peake 115 123. 1 Pow 142- 2 East 314

Subjects of Contracts

Under this division

we are to enquire in relation to what subjects contracts may lawfully be made as to kind the parties. 1 Pow 152- On this head a distinction is to be observed between contracts executory & executory, 2 Bl. 145- Executory & Executory- What see 1 Pow-234-175-

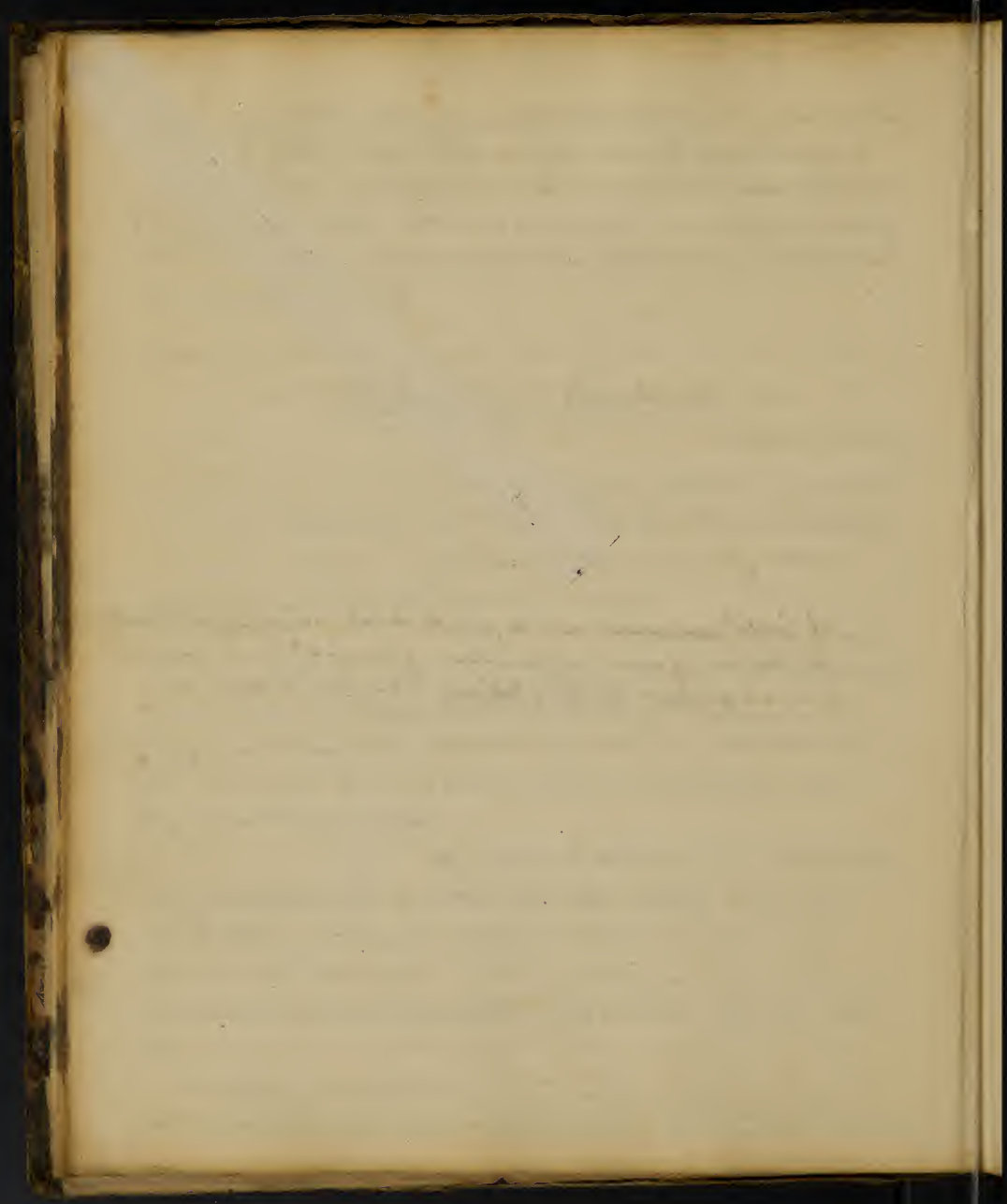
As to the first, persons

can by contract execute once, a thing, in which he has neither an actual or potential interest at the time of the agreement for one cannot transfer to another what is not his own Pow, 52. 5 How 402- Hob, 132. Ex. He grants to B all the wool he shall afterwards buy- grant is void be 49.

Let A lease to B the land of another C for many years to hold for rent "The Coper has nothing in the land at the time of the lease." "mit heredit" Le- 1 Pow 157 C. L. 41 Exp-233-306 3 Lev-146 } Leases if the lease were made by indenture Coper is tenant of A- Exp 233. 306- 3 Stra 317. 7 B- 537.

If one of two joint tenants make a deed of bargain and sale of the whole land & his covenant afterwards dies this Coper is tenant

A judgt recorded on a judgt book, no explanation
for they are of equal nature. Seem of the judgt had been placed
in a set off & found for Off 5 Hill 409 1 Cow 208 5 Wound 240



Subject of Contracts

1113

The morety of the letter was not poss. 1 Bar. 180 Bar. m. 90. 2^d. If the deed contains a covenant that grantor is seised of the whole why would not the other morety, possibly, be established?

Upon the same general principle if A sells to B a house upon condition of payment 6 months hence A cannot sell his title another before the expiration of the 6 months for the property is charged to the sale to another before that time would not A make good by force of payment at the time by B - for at the time of the sale the interest would not be in A 1 Bar. 157 - 1 And. 482 -

Nor can one grant that to which he has only an inchoate title to be perfected in future. Ex. a contingent remainder. 1 Bar. 185 - D. 221. 4 N. 248 - 1
The such contingent interests are deemed able devisable in Equity, assignable 1 Donb. 203 - 3 N. 88, 1 W. 30, B. 222. 605 -

But a thing of which one is potentially the owner (that is - a thing answering to another actually vested in him at the time of bargaining) may be disposed of & the by a contract executed. Ex. The lease of one house for three years to some. 1 Bar. 156 - 1 Hob. 132 -

Right not created actually or potentially, may be subjects of executory contracts - there being no other than stipulations precedent & preparatory of to the act by which the interest is to be conveyed - for the one cannot actually convey what he has not he may oblige himself to convey what he shall acquire in future. Ex. A covenants to purchase B's land & convey it to B - A covenants in B to lease the land of which he shall be seised on such a day

possible.

- in their cases a future act is to be done to execute the contract. 1 Paw 158-7. Bar. Man. 19- Seems if no future act is to be done to give effect to the contract - it must then take effect if at all in the instant executed which cannot be - Ex. A. covenants to stand seized to the use of B of the lands he shall afterwards purchase 1 Paw 157. 234. Bar. Man. 30 231. 245 for this operates as a conveyance & executes - no future act necessary -

It has been held in Ex. that if one makes a deed with covenants of seizin & of lands of which he is not the owner & afterwards purchases it he is estopped to allege that he held no title - & the rule is the same in Ex. as to leases 1 Root. 222. 234. 295. Co L 265- Sed 275. Pow. M. 495. 6 2 Keb. 564 - D. L. 229. 6 Mod. 255. B. L. 1048. B. D. 270. Ex 293 306 - So also of mortgages Pow. M. 77. 246. 11. 1760

The rule is the same at C. L. as to persons conveyed by deed with the usual covenants 1 Paw. 150 - 342. 370. Co L 265 - Litt 445 - 251 295 Why then may not a writing grant remainder or executory devise be passed by such a deed by way of estoppel?

All contracts must be 1. Possible of performance - 2. Lawful - 3. Certain. 1 Paw 153

Impossible No right can be acquired or obligation imposed or matter of contract to perform what is naturally impossible - such contract is collusive in the nature of things it can not be performed 1 Paw. 160-78 Lex non cogit ad impossibilia 1 Root 420 - Co L 206 - Ex. Covenant to convey one of lands

If logs be delivered at a mill under a contract
that the miller shall saw them within a certain time
he shall receive one half the boards this is a more prudent
planter retains the general property in the logs until they
are manufactured according to the contract. Scilicet
acquires no interest in them until he entirely performs
on his part - when there is an entire performance the
boards become in common of the boards - 3 Hill 29 3 TR
316. & Greenl. 101. - If the contract had been to take
the logs & saw & return a certain quantity of boards generally
it would have been a sale -

Possible.

705

Imposed by the ocean. Lamb-37. 90. 139. Beske-755-

Let the law

distinguish between acts or things in themselves impossible & those which the not so are inevitable acts to the party contracting - An agreement to perform the latter is binding. Ex. A contracts to sell an estate which belongs to B. If B then A is liable in damages for non performance the Equity will not decree a specific performance - 1 Bos-181. 2 Dalg-1165-

In the former case it must be evident to all parties at the time that performance is impossible - it therefore cannot be the intention of either that it should be performed -

In an agreement to deliver two acres of corn on Monday, &c. - & so in proportion doubling the quantity on every successive Monday in the year - The promisee it is better & liable to pay something - 1 Bos-112. 2 Dalg-1164. 6. 1165 300. Wheat-269. 1 Lev-111. 1 Pol-295-1 Keb-589.

Upon what principle is this decision founded? for the general rule is that if the thing stipulated for is not delivered its value is the measure of damages - 2 Burr-1010. 1 Sta-480, 2 East-211-1 Doubl-224 1 Bos-408-2481. 1 Lev-217. 1 Ex Ca-221 - ex prop contract treated as void on the ground of fraud - the promisee subjected on an implied contract to pay the value of what he has received for it -

A contract is not void upon the ground of its being impossible unless it is strictly so - the distinction between a near & remote possibility is not regarded in contracting

Sauful.

contracts - Ex. a covenant by A that if he dies without issue his land shall be settled on B is binding & may be specifically enforced in Equity - 13 Pow 165 - for the contingency, whether probable or not is not impossible.

2. One covenant is expressly & absolutely to do a thing not impossible in itself, being prevented from performing it even by inevitable accident does not discharge him - Ex. a covenant to leave such a place by such a time with a ship to take a cargo - prevented by tempest - covenantor not liable 3 Burr, 1639. 1 Denb. 366 - Doug 259.

In such a case he is actually an insurer against the risk of failure - It would be otherwise I think if the covenant had been to perform the voyage with ~~intention~~ in a time in which such voyage could not have been prevented.

Sauful. - The thing stipulated to be done must be morally possible. That is - lawful or the contract is void for no one can be bound in law to do an act which the law itself forbids - 13 Pow 164.

A contract is against law when the agreement is to do a thing which is immoral or is in violation of a prohibition. 13 Pow 165 - 1 B. & W. 189.

Of the first kind are all contracts which have for their object something forbidden by the law's nature - e.g. to commit murder - a contract therefore to pay a - a contract to sell a slave - a contract to kill or rob. B & C. 104. 13 Pow 166 - 1 Haw. 108 - Denb. 218 - 1 Cr. 59.

If one leaves his land & cannot or will not give
forth his title for he who lets others to give
forth not merely to give a name for a new suit
15 C L 492

Agreement to indemnify one for publishing a list as
to indemnify the costs of forth is void 39 C L 488

1844
The first of the year
was a very dry one
and the crops were
very poor.

The second of the year
was a very wet one
and the crops were
very good.

The third of the year
was a very dry one
and the crops were
very poor.

The fourth of the year
was a very wet one
and the crops were
very good.

Summary.

So contracts are against law when they have for their object something which the law of nature or the divine law is contrary to the law of the land or business, as
Coler 60 L 208 1 Bow 166

A contract may be contrary to the law of the land by being in repugnance to the public welfare - 2. As being against some maxim or principle of law - 3. As being opposed to some positive statute 1 Bow 166
Comp 39, 144, 31, 322. 34 R 17, 23, 7th 543 - 8-89, 1201-272-284, 341

1. All contracts the object of which is a general restriction upon ^{free} travelling in a certain ~~place~~ are against law as being opposed to the general welfare of the state & therefore void - 1 Bow 166 - 2 Ld 67
Ow 143 - Vol 211 - Reg 292 - Cro E 872 - 11 Id 303 - So are all contracts in general which militate against national policy - 144, 31, 322 - 7th 543 - 8-89. Comp 39.

Rule the same as to contracts the object of which is a general restriction upon the exercise of a trade even for a limited period - 1 Bow 167. 7th 543. 2210-115 - Cro Ju 596 - Co L 268 - 13 R 181
So if a husband & wife agree not to alienate his land 1 Bow 167. Co L 11 E 53. C

But an agreement not to exercise a trade in a particular place may be binding, for such contracts may be useful - 1 Bow 167. Cro Ju 598 - 2 Bult 130 - Coler 172
Jones 13 -

But a contract of the latter sort is not obligatory unless founded upon sufficient consideration & upon this point

careful.

the owner, he cannot it seems lie upon the party claiming under the contract - the presumption is against the existence of a sufficient consideration 10 Paw 168 - Stra 139. All 439 - Mo 115 - 242 - Palm 172 - 13 W 181, 92 - 111 Mo 27, 85 - 180 - 2
It seems to be immaterial whether the title which one agrees not to procure is his by purchase or not - if it is not still the validity of the contract depends upon the foregoing distinctions - for no man ought to preclude himself from engaging in any useful trade 10 Paw 169 - 13 W 192 & therefore the policy of the law is opposed to the contract -

Upon the same general principle we decide for an absolute maintenance bond - it is against the public welfare. 10 Paw 172 - East 229, 2 Inst 212 481 185 -

A contract with an alien enemy is also regularly void as being against the public welfare. because a communication between with the public enemy may endanger the public welfare or safety. Plow 88 - 10 Co 100 - 10 Paw 173 - 2 K 178 172 - 85 -

So an insurance on the property of an alien is void it promotes the armistice of the enemy & gives our own citizens an interest in the security of that armistice 8 M 548. P 65 - 1205 - 245 - 1 East 96 - 475 - Dang 288 -

The rule that contracts with an alien enemy are void is not universal - common contracts with an enemy - that is - a contract by which the captived party on conditions of being discharged agree, to pay the captor a certain sum as a ransom is obligatory & the master

A. participata in an undoubted act cannot recover of
another participata money paid at his request in
furtherance of the common object 25 C. L. 47.

No ministerial officer whose fees are prescribed by
law can enforce an action on a promise to pay extra
for extra services tho they are beyond what would be
legally required of the officer to render 15 Mand. 44
Mich 175. 4 Ct. 431 2 Burr 724 Cro El 103

An agreement Between a Physician & his patient
the one to give his services during the life of the
other & of the patient to pay him a certain
sum at his decease is said as furnishing
an inducement to one to shorten the life
of the other. And where owing to the situation
of the parties great confidence is induced - as in
the case of Physician & patient - Attys & honest
Clergymen & ministers all contracts between them
are received with jealousy & will be set aside
if such confidence has been abused. 10. C. & 6th
141 Bridgman v Green & 2 Bro 627 Matter Green & Lohr
2 Ld 492

a ship may, by such a contract bind its owner as well as himself - but such contracts can be enforced only in a court of Admiralty - Doug 619. Burn 1734 - 872 563 -

Under the same tho the hostage is or the captor is taken with the hostage - the latter being only a pledge the rights and independence of the hostage Doug 619 - 872 563 - Burn 1734 - Law 2umaine such contract in general made with a enemy, ^{as} since out of a state of hostility, & tend to mitigate the ends of war are binding Doug 265 - Ex Breaches of peace between belligerent states. Humes capitulations de between mil- itary commanders - agreements for exchange of prisoners - in Eng - however ransoms contracts are now prohibited by 22 Geo 3 - Marchant. 2um 432 - 872. 272 -

brocage

Marriage brocage

Contracts are void - that is void given for a posterity, in or promoting marriage because they are of dangerous consequences militating against the welfare of society - & the same principle applies to promises & agreements of the same kind - 1 Barr 174-90 - 1 Ch. 2. 87 - Shaw. 76 - 1 Hamb. 245 - Burn 474 - Ex 184. 3 Law 411

2. Contracts opposed to any maxim or prin- ciple of Law are void - hence if the consideration which is the cause of the promise or the promise itself is opposed to any such maxim or principle the contract is unlawful & void - Thus a promise on consideration promisee would fraud- ulently discharge a debt due to his master was holden void Barr 176. 66 - 1 Deak. 38 - 3 Deak. 9. Consideration is illegal

Danful

If a Sheriff promise for reasonable consideration to permit an escape it is void - the promise is unenforceable. 1 Bos 176. 10 Co 56. 102
Cz-356 Cro E-199 - So a promise by a minister of Justice to do an unlawful act in his office or by another to indemnify him for doing it. 1 Bos 176 - Cro E 230

But when the unenforceability of the consideration or rather the defect which makes it unenforceable is unknown to the promisee or contract of indemnity, founded upon it is binding - & he brings his action on pretence of having lawfully arrested him & promises to indemnify the host for keeping him as a prisoner - if the host is subjected & is liable on his promise 1 Bos 171, Nutt-53 So if the 3rd in a fight against the Sheriff to take certain goods as the Croft which are not his & promises to indemnify him the promise is good. 1 Bos 173 Cro E-752

All contracts which militate against morality & decency are void as being illegal. Camp 39-729. 85 - 1 Bos. 38-233. 238-610- 8th, 693 -

So contracts made for corrupt purposes &c. but with one having a vote or interference in appointments that I shall not be appointed to such an office 1 Bos 182.

So of a wager with a council or Judge by way of bribe 1 Bos 184

So of a wager that is bet as to the issue of money - or of a wager as to the mode of playing an illegal game - 1 Bos 184 - 2484-183 -

But a wager between 2nd & 3rd in a mere case the latter with decision 2nd is good at C. L. Camp-85. & wagers in general are binding at C. L. 1 Bos - 141 E

But in the all wagers are made illegal. Stat 361- sec -

The projectors of a Bill were, pending, a Bill in Parliament
for incorporating, there made an agreement on behalf
the proposed corporation in consequence of which the threatened
oppositions were withdrawn. Hence that the corporation
having, viz^d the benefit of the agreement was bound by it
and that it was not rescinded 10 C. E. Ch 88 and 4 Geo 28

By St. of 1849. the interest only is forfeited & the contract
is void only in respect to that - Vid Stat. Ct. 1849.

Q. 4. My 270. 7 Tolm 160 319. But a bond from one in 24th to
be a true prisoner first to escape is good if not for ease and
for a 1 Bound 161. 163 n 2 2 Tolm 6 239 - So a bond for ease
& convenience that prisoner may go at large within the
walls of the prison & condition that he shall remain a
true prisoner is not void for such indulgence the Sheriff
may grant consistently with his duty 2 Tolm 6 239 -
vid 1 Bound 161 n 4 If any thing he adds to the count
prescribed by the act which is not legal it avoids all
the rest 1 Bound 161 n 5 quod vid

8 Tolm 98

Sawful

in wet estate wages in gaming -

Contracts in favor of third person
are illegal & void - Ex - An agreement between two sisters & another
to cheat the government - 1 Bos - 165-76 - 2 H. 763 - 3 P. 106 - 4 H. 51. 322.
656 - Ex p. 184 - Doug 433. 350 - 2 Cr. 156 - 12 Ag. 280 - void at law as
well as in Equity

Lo of restrictive agreements to refund part of a marriage
portion - fraudulent as to the other party to the marriage Ex p. 184
Stam 240 - Lo of agreements for pay for attendance at elections
to enhance the price of goods by influencing voters - 1 Bos 186 -

Lo contracts absolutely & tot
are void, 1 Bos 186. 56 - Ex A contract for more than 100 of interest
is void by 12 Ann. 2 and Statute 1727. 26 - ~~4~~

Lo an agreement by a
bankrupt or any person in his behalf to a creditor for
reigning his anticipate is void by 5 Geo. 2 - 2 words have been so
at C. L. as fraudulent against the other creditors 1 Bos 196 Doug 696. 80

Contracts are unlawful & void
when the object of them is the embezzlement of some legal debt - as a
covenant by a common Sheriff not to receive as much as interest
amounts to - 1 Bos 195 - Hob. 12 - 1 Mod. 356 -

1 Chain. R. 450 14 Holm 378 2 Lo of contracts which tend
to embezzle unlawful acts or embezzlement - as a bond to indemnify
a printer for printing lies. 1 Bos. 196 - Lo of contracts to indemnify
a Sheriff for embezzling a writ or suffering an escape - or to, cure
one harmless if he will do any unlawful act 1 Bos 197 P. 60 -
12 Cr. 209 - 10 Co. 100 - Dy. 324 - 118 - Ex L. C. 353 Lo a merger
between two that one of them or a third person shall do an

Sansful

any criminal act - see incitement to immorality Nov 198

Distinction between laws

for the performance of covenants some of which are lawful
and some voidly stated & where some are void & some lawful
at C.L. - In the first case the whole bond is void - in the
better it is good as to the covenants which are lawful & void
as to those which are unlawful - Thus I can under Sheriff's
warrant not to remove ^{the} ~~the~~ ^a certain amount & also to
serve the Sheriff's writs of capias against prisoners arrested
by him the bond as to the former covenant is void & as to
the latter good - 1 Pau 99 - 2 Sids 357 - Hunt 287. But if a Sheriff
takes a penal bond against the 20 L. 6. - for care & favour &
also for a debt due the whole bond is void - Pau 200 - 4 Bar 438 -
Hunt 287 2 Sids 357.

This distinction arises I conceive from the latter construction of the Stat. Law as it declares the bond to void - that is - according to the construction in such cases the whole bond or security - The one illegal contract creates no right yet after it has been executed the law in some instances suffers it to prevail by refusing to aid either party in rescinding it -

18th Nov 2005

When the illegality is of such kind that both parties are equally injured there is the without exception - that is - the unlawful but is done he who has paid cannot recover back what he has paid - 2. pari aequitate de - 10 cur - 200
Dang 1178-68- Bu 11131 Dec 22 - 3 Re-578- 1 Bos 9-293-
Carg 770- Burr 1012-

During which the antroch remains

The delivery of property to one by a Sheriff where he holds
by virtue of a levy is a suff^{icient} consideration for a promise to
redeem it. *Casey* 322

Any agreement between creditor & his bankrupt debtor calculated
to defraud the other creditors is void - but where every thing is
fair & the creditor agrees to take no dividend under
the commission in consideration of which the debtor promises
to pay the debt such promise is binding. - *Long & R.* 214

A servant under a quarterly hiring is discharged without
proof cause in the middle of the quarter (can he
recover for the whole quarter in Inst. Assumps? No
see Endurance. Merriam after demanding to perform the
whole service - yet 4 Camp 375 2 C. L. 334. No
14 C. L. 13. 34 do 155. If he dies before the quarter
is up he cannot recover for the whole quarter
24 C. L. 155.

A Sheriff is obliged to perform all official
acts required of him by parties in interest
& is entitled to receive a reasonable compensation
& in the absence of any Statute providing otherwise
the payment of the same he must have the
right to recover of his employer 3 Met 315

executing his bargain back the money paid 18 Nov 202 - 2nd 11/82
 Doug 472 - Ex - money paid to A to his him to beat B - if the beating is
 not committed the money may be recovered back - If it is committed
 - goes to the correctness of the distribution is just & forcible
 - would it not be better to allow a recovery in both cases in
 point of principle or in neither? 7 N 586 - Some decided that
 money deposited on illegal wages & paid over with the loss
 current after the wages is decided cannot be recovered back
 8 N 575 - 1202-3-248 - Doug 678 - See 18 Nov 41. is paid he -
 But if the money in this case had not been paid over either
 party may recover from the state the holder the sum
 deposited by him only the the wages is decided - 8 Nov 222
 5 N 405 - Carr 14 Johns - 426 -

Suppose the state holder
 says the winner after being prohibited is liable?
 120239. 5 N 409 1202-3-297. 18 Nov 164. 18 N -
 1075 - 2 W 203-9 - On principle he is for as it seems
 to me the could not in such circumstances of the
 state holder 8 Nov 222 - Fed ind Exp - 82 D - 25 - contra
 by Hoffman recorder & the weight of authority seems
 to be against the recovery on the ground that when the
 contract is executed the party paying cannot recover
 back - Under our Stat - the loser may recover back in
 all cases Stat - 361

It has been decided that money paid
 to one of the parties before hand on an illegal wage
 was recoverable back after the event 5 N 575 - 2 the
 the court was in favour of the Deft - 18 Nov 90 3 N 575 -

42 John 426 Money paid for the procurement of an office
successor to the before the officers provided - seen afterwards
- So if a promise is paid on an illegal policy before
after the risk is over | Raw 202 - Doug 111. | not recoverable

But when the party
who has paid money on an illegal contract is not party to
criminals he may recover it back tho the contract is
executed Raw 201-21

This is the case where the law prohibits
the contract for the protection of the party paying - Ex. in
case of money paid - Raw 202-4 - Cowp - 791 - Doug 451
671. Stra - 915 - 4 M. 501 - 2 M. 132 - 1 M. 81. 65 - 1 Tonn
218. 75 - 122 - can - So if money paid by a bank-
rupt or his friend to a creditor for signing his certificate
Raw - 205 ante

A security given or promise made
in consequence of which a transaction prohibited by law
is not of course void - Ex - If one of two partners in an
illegal transaction pays the whole of 2. the security
or promise from the other for a payment of part it
is good - 4 Burr 2069. 3 M. 218. 2 M. 31. 379 - 10 M. 130 -
6 M. 61-405 - 2 Bos 372 - 7 M. 630 - So it has been
held in if it is paid with the privacy & consent of the other
party the security is given or promise made 3 M. 630
gr - this rule has been much shaken & seems to be
entirely overruled - 2 M. 31. 379 - 6 M. 61-405 - 7 - 620
2 Bos - 72 - 3 M. 72

If paid without his privacy or consent
there can clearly be no recovery 2 M. 1243 - Here there is no

Part Accretion is a suff. ^{enough} to support a cov^t for securing separation
of the innocent offspring of such criminal insubordination has a claim to protection
& support which Govts. of Ky. cannot & do not disregard 2.P.M. 432
3 Bro P.C. 445 Tabb. 153 Anst. 520. 1 John Ch 334.

Def^t guaranteed Off^r Agt^t debts to be discharged by A.B. to
the extent of £400. A.B. entrusted a debt to the amount of
£625 & on a composition with his creditors paid $8\frac{1}{2}\%$ in the
pound leaving due Off^r on his side debt £356. Held
that Off^r was entitled to have a deduction of £171.13.4
the amount of the dividend on £400. at $8\frac{1}{2}\%$ in the pound
20 L. 213 Hen. 111

Certain

new as gesture no special intame

If a person without the
makes a contract the making of which is made criminal
in him by positive law he may be bound by it tho he would
not deem under it - 24- 254 21 Pls - it is an offence for a
clergyman to trade but if he should trade he would
be bound by his contracts as a trader 1 Otter 196. Ch 19 for
the nature of the contract is not unlawful his making it
only is so - the only is the offending party & the object of
the law is merely to subject him to a restraint - not to
grant him an immunity - he cannot take advantage of
his own wrong, 1 Otter 199.

If the object of a contract is
perfectly unlawful it is void - no consideration to be obtained
- of no advantage to the party claiming - 24 - agreement
not to wash one's hands -

A contract which constantly affects
the peace or interest of third persons is void - 24 8 Weir
that he has committed a crime 2d Paw 232 - Caufe 729. 23
342 699 - So of a wager which tends to the introduction of
indecent evidence 1 Paw - 233 - 342 - 700

Certain

1 Paw 130 - 82 - 120 270 - 146 776 - 146 67 - Hence
If a promise to deliver goods in consideration
of 3d promise to pay money in a short time a promise
is said to be void 1 Paw 180 1 Bilt - 72. 97 - 120 2 250
Because 180 - promise which is the consideration of it
is uncertain & therefore void -

not a promise to pay money without specifying a time of pay-
ment is good - It is payable immediately, 1 Bow 180. for it
creates a present debt - 7 '12 121. 42' & no future time
is appointed for payment - Also if one promises to do a
voluntary act & no time is appointed he has his whole
life time it is said to perform it - Ex - 20 decides goods ac-
- 1 Bow 180 - Sed id certum est quod certum reddi potest -
hence if I promise to repay to A whatever he pays out
for me it is sufficiently certain - 1 Bow 180 30 ph. 148
Ex C. 194 - 1 Sed - 270. 1 K 6. 56. 65

Nature and kinds of contracts

All contracts are said to be executory or executory -
A contract is said to be executory when the parties themselves
the property, to each other together with the possession or with
a right of future possession depending upon an event that
is certain without either trusting to the other - Ex Goods
sold for hire for & delivered - One having land under a
lease sells it to another to wit when the lease determines
1 Bow - 234 - 175 - 53 - 231 418

Ex. executory are those which are
introducing, or preparatory to an actual transfer or
exchange of property - Ex - An agreement to exchange
horses next week - 231 490 - 1 Bow 285 -

A contract that
is executory when one performs immediately & the other
is troubled - as a loan of money & a promise of repayment

If A promises to give something to B. in case he sh^d -
succeed it is reasonable. A is not left to his choice to give
or not - the law will determine when he ought to be
satisfied 2 Term 402 Holme & Mather -

The genl. rule is, that a contract is not assignable - Except in
if it is one to an ascertained debt & to one, & it is agreed by
the three that C. shall be B's debtor instead of A. & C. promises
to pay B. B. may maintain an action agt^t C. 15 Co. 346

It is agreed to deliver a large quantity of any article &
a part only are delivered vendor is bound to pay for
them until the time for delivering the whole has
expired & if the whole is not delivered recovery
the part delivered but if he elects to keep such part
he must pay the value of it 11 C L 256 & vendor
is liable to a new action for not delivering the
whole 2 L. part 1167-

When a contract for the sale & delivery of chattels specifies
the quantity price & time of delivery, vendor is not
entitled to recover and a quantum meruit for a part.
Although the stipulated quantity the vendor has consented
to or recission of the contract on to two & times
of delivery, 15 M and 182. 13 C L 258, on selling of
bees in a crop 256 just also 6 N H. R. 481

If the contract is to pay when the whole are delivered - a part are
delivered & the rest hurried up without the fault he is answerable
for no part - 32 C L 458

Nature and kinds.

1128

All contracts according to Pow. 234-6 - are express constructive or implicative - ~~implied~~ - The usual distribution is into express or implied.

An express contract is one in which the parties stipulate in express terms what is to be done or omitted, Pow. 236 -

Constructive contracts are such as are said by construction out of instruments or express agreements & are different from what the instrument ~~privately~~ imports - that is - they differ from the form & terms of the instrument or express agreement from which they are said, Pow. 236 - Cro. J. 137. 663 - Helot - 134 1 Lev. 24 - Reg. 14 Ellis - 113 - This however is but a deed in which express agreements being said by construction from the words used - ~~as~~ thus as recited in a deed of conveyance respecting the grantor's interest in the subject amounts in construction of law to an agreement or covenant that he has title according to the recited, Pow. 237. 1 Leon. 122 -

So recited in a marriage settlement agreement that whereas A is to pay to B £1000 - for the marriage portion &c - we holden to be a covenant to pay that sum - 1 Pow. 238-3 - Green. 57. 2 Eq. Ca. 65 - So an exception in a deed indented may amount to a covenant Ex - Lease by indenture of a farm excepting a particular close - this is said to be a covenant by lease that the close shall not pass by the demise, 1 Pow. 233. 9 - Cro. E. 65 - Plowd. 67. 1 Leon. 117. 120 11 C. 102 11 Co. 5-6-6

But now how not to construe that lease shall not disturb
 the propriety of it - for lease is a stranger to the point
 excepted but when the exception is something arising out of
 the thing demised it amounts to a covenant that lease
 shall not disturb the lessor - *Ex Lease of land*
 expecting a right of way over it *1 Bos. & P. 280* So lease of
 a house expecting a right to keep two it - *you* - *use* *it*
it *be* *by* *in* *the* *case* *1 Leon 724* *2d* *you* *also* *whether* *an* *in* *de* *ment*
is *needing* *1 Bos 241* *1 Be 581* *Curth 232* *Dal 190*

1 Mod 170 For here lease has an interest in the subject
 out of which the right excepted arises & therefore is considered as
 supervening that right - So a reservation of part in a lease
 inductive amounts to a covenant to say it on the part of the lease

1 Bos 242 *Co G 65* *Py 57* *Str 407* *1 Kent 19* *Co D 899*

1 Bos 156 *1 Hoff 518* - So a lease without express mention
 of waste gives the lease the trees growing on the land demised
1 Bos 243 *1106 132*

So *Imobligation* is understood that the obligee
 will that the obligation is a certain part shall be void it is a
 good exception tho the words are obliges & not obliges for
 such appears to be the intention of the parties - *1 Bos 244*

1 Land 246

Implied or *implied* covenants are those
 which are neither express in terms or raised by construction
 from the terms in use in an express contract but which arise
 by operation of law out of the nature of the case *1 Bos 245*

4 - Labor done or goods sold without any express promise to
 pay - covenant is implied *1 Bos 246*

Where one of two sureties, need have a compulsion to pay
the whole debt it was holden that he could not
compel his co surety to pay any part of the cost
of the suit against himself but merely his proportion
of the cost 11 C L 393 - see interest on the page 10 C L 650

If a surety, upon obligation that he will not be liable after a
certain time it is no defense unless specially pleaded &
given then 11 C L 551 & in all cases if the bond is voidable
the matter must be specially pleaded & so when made void
by Statute - if void by accident it may be given in
evidence under the gen. issue - 11 C L 350 n & 6 C L 442
& Camp 272. obligation of one surety 3 C L 126 or 4 C L 126

If a note or other simple contract is secured by a mortgage deed which is a specialty, the nature of such simple contract is not altered. F 17 March 101.102. 2 Stark R. 334
3 C. Law R. 330 & 4.

If two or more by the same instrument severally promise to pay, the contract is several & not joint & several 28 C. & J. 70
in this case the debt is several severally promised -

If a contract may exist without being by deed tho. a deed be added yet this will not prevent its answering as a simple contract. Ex. Agent authorized by power to make contract for principal & he makes such contract by deed 5 Hill 113 Story Part 179.

Nature and kinds

1129

If one takes without authority the profits of an infants land there is an implied promise to account for them - or if one delivers his goods into the hands of another the latter is thereby engaged to take such care of them as the law requires -

Bar 1160 - If A. gives pleasure money on an exp^d the law raises a promise that he will pay the money to the B if in the exp^d. Bar 256 -

If A. grants two acres to B. he also implicitly grants a right to come on the land to cut & remove them & if he grants to B. land surrounded by his own he implicitly grants a right of way to it (Bar 256) 8 Law 515 - Darnell 222 - 3 Hinks 65 - 28/30 for other wise the grant cannot be enjoyed - 2 (108)

If a person dies without offspring the fee simple for the farmer is by implication of law considered as tenant from year to year (Bar 135-250) there is a tacit agreement to renew the lease in this manner -

In Equity also contracts are sometimes implied - Ex - If purchase of land having been only a part of the purchase money becomes a bar to the land stands charged with the residue & purchase by an implied agreement trustee to that amount (Bar 25) - 1 Br Ch 423 - 2 Lillo 272) given if security is taken for the purchase money 1 Br Ch 423 -

Contracts are either absolute or conditional - Bar 206-5.

An absolute contract is one by which one binds himself absolutely & unconditionally

- Ex. A is continuation of a lease covenanted premises to pay, R. 1100 257

A conditional contract is one the obligation of which depends altogether or in some respect upon some uncertain event upon which it is to take effect be defeated - suspended or abridged. - 1 Bow 259 2 W. 156. (Shaw 201) Thus if A agrees to purchase land on condition that B returns from India by such a day. The condition suspends the obligation to perform till the day. If B does not return by the day, the obligation to purchase is annulled. - 1 Bow 260 - Col 201

If A sells property to B on condition that in a certain event B shall pay for it £10. In another event less. The contract is conditional & gives the amount to be paid. (Poth 712. 1 Bow 260) If A agrees to give B. for his land as much as B shall judge it to be worth - A's obligation to pay is suspended till B. decides the value - then he is absolutely bound to pay. - 1 Bow 261 Dy 91. 6.

unlawful conditions

The effect of these varies according to the nature of the contract & of the condition annexed to it (1 Bow 261) If an unlawful condition is annexed to a executory contract the contract is void - thus if one is bound in an obligation conditioned for the performance of some unlawful act as to kill B. - the bond is void (1 Bow 261 Col 206 - Exp - 175-85) - So if the condition is for the commission of unlawful act or the omission of some duty legal. Exp 175 85 - 2 Kent 109 2 Wils 344 - 5 Lev 2411) whole void - So if the condition militates against public policy or the general welfare

If a writer agree to remit a part of the debt upon condition
that the residue is paid the ^{con} must be strictly complied
with 1 Cowen 202. 2 Hall, 481 20 John, 78 17 do 169

1
If A. agree to work for B. at such wages as C. shall say
he agrees. If B. refuses to refer the matter to C. it may be
him in good answer? ^{But} in the contract. Since if B. is
ready to refer must see in the contract & C. decision will
fix with such the rule of damages 5 Mead. 206
q Pot 326.

... ..
... ..
... ..

Participations not entitled to costs in Chancery on bill
to set aside the alleged contract - public policy requires
only the execution of the contract 10 C. & F. 445 1 Ves. Sen
276 3 Ves. 231 17.

... ..
... ..
... ..

Unlawful Conditions

103621

- Ex - in restraint of trade - Exp 183 - 18 W 191 - Burn 2225

In such cases the law frees the obligor from the penalty but he should be under a temptation to commit the crime - 1 Bow 202

But if an unlawful condition is annexed to a conveyance or will executed the condition generally is only void the gift is good & the estate absolute (1 Bow 261 2 Bl 157 Col 206) here the possessor may be under no temptation to refuse the law sues to him the estate without performing the condition 1 Bow 262 -

But this rule holds only when the parties are in pari delicto - it is otherwise when the possessor is not participator in crime - as if a mortgage is made to secure a crime - in such cases the mortgage is void & the innocent party protected - In the former class of cases that is - when the contract is executory & the condition unlawful the without law is less no effect for the law will not enforce it - In the latter that is - when the without is executed if both parties are innocent the law will not aid the possessor to defeat it or that in both cases the law leaves the parties as it finds them -

So bonds in restraint of marriage are void (Exp 183 Burn 2225) the condition being unlawful - So of bonds for withholding evidence (Exp 184 2 Kent 109 2 Wils 344) - So of bonds to secure a reward for prostitution ¹⁵⁶⁸ ~~1568~~ given before hand tho if given afterwards they are valid (Exp 182 - Burn 2225 - 5 W 344 2 Bl 432)

Impossible Conditions

In the former case they are an inducement to immorality in the latter not -

All conditions repugnant to the nature of the contract are void - Ex - Feoffment in fee on condition on condition that feeffee shall not alien &c the condition is against law & the estate is absolute 1 Pow 262 - Co 2596 2 Ke 288 -

Let a bond or covenant by feeffee not to alien or to the the profits is good for this does not oblige him to alien but merely subjects him on his bond if he does -

Conditions may

be possible or impossible - Possible conditions require no exposition - Pow 263 -

Impossible conditions are 1. such as are so at the time the contract is made or 2. such as become so afterwards - (Pow 264) If a condition possible at the time of making it become impossible afterwards by the act of God or the Law being annexed to a contract executed the contract is not avoided by the non performance (Co L 200 - Pow 264 - 444 - 6) same rule if the condition become impossible by the act of the party granting the interest - Ex - Feoffment &c condition that feeffee in 4 months go to London or feeffee's law rep - feeffee dies within the time - feoffment becomes absolute (10 Mod 263 - 1 Co - 98 May 35 - 1 Pow - 446 -) for the estate is executed & cannot be diverted except by default of feeffee - Antis Deide -

Le of grant &c on condition that grantee shall within 6 months perform a certain voyage for Grantor & the voyage is prohibited by Stat 1 Pow 449

If an agreement is in the alternative & one branch of it
cannot be performed the other must be 32 Cl 485

Contract to build a house by a certain time in a good work
manlike manner - work done after the time is accepted
by the Off. Held that Off might recover on the common
counts as he may in all cases except the condition in
the contract is one that goes to the entire right of
action. The condition to be done in a good manner
is no more than the law implies in every contract 32
L L 312

Where Off has recd a benefit from the non performance
of a contract Off. shall have the benefit of it & shall
sue for non performance on his part 4 Page 5 top.

The party who is not charged with a violation of
a contract should do the best he can & for every
unavoidable loss occasioned by the failure of the other
he is entitled to a complete indemnity - i.e. if he can
procure articles which were to have been delivered by
a reasonable time he is entitled to such damages
as will completely indemnify him for the additional
expense & pain & injury resulting from the necessary
delay. It w. be unreasonable by negotiating to buy
the articles, where he would be permitted him to recover
all the damages, such as wages of workmen lying idle
occasioned by such neglect 4 Page 5 73

Impossible Conditions

1838

2 Q. W. 218 - 3 B. & C. 389. 5th 269. Sect. 198. S. Mod 51-1) It becomes impossible by an act of law - So of a feoffment that feoffee shall in 6 months buy a feoffor & within that time feoffor marries another - here performance being impossible by the act of feoffor he can take no advantage of non-performance - the estate becomes absolute in feoffee -

But if such a condition is annexed to a contract executory & becomes impossible by the act of God or the law the obligation is severed & obligor discharged (Rus. 265 417. S. 170. 1 B. & C. 209. 1 M. 628. 2 M. 126. 8 - Co L 206) & the rule is the same if the condition becomes impossible by the act of the party in whose favor the contract is made as the obligee - Series of obligor disables himself to perform the condition forms no excuse to the advantage of his own wrong (5 Co. 21) For the contract being executory no advantage can be taken of it till there is a default in the obligor Ex. Bond with a condition that J. A. should appear at such a court - he dies in the meantime - obligor discharged (Rus. 265 -) 2 N. R. 240 - Rus. 417. 20 - 5 Co. 92 Co L. 974 - Co L 206 - S. 198

If the obligee either prevents or dispenses with the performance of the condition the obligation is discharged. 1 M. 638 D. 2 - 638 Oving 259. 264 - 1 Co. 128. 1236 3 R. 590 - Galsh. 533 - 1 Co. 619. 1 Ex. R. 53 -

If the act of a stranger is made necessary by the terms of an instrument as evidence of a condition being complied with & he arbitrarily refuses to act is the obligation severed? (2 M. 1574 - 5 Co. 23 - 1 R. 1452 1 M. 710) note the case of insurance against fire - lest that

Impossibility Conditions

was the case of a condition precedent 6 Br 710-

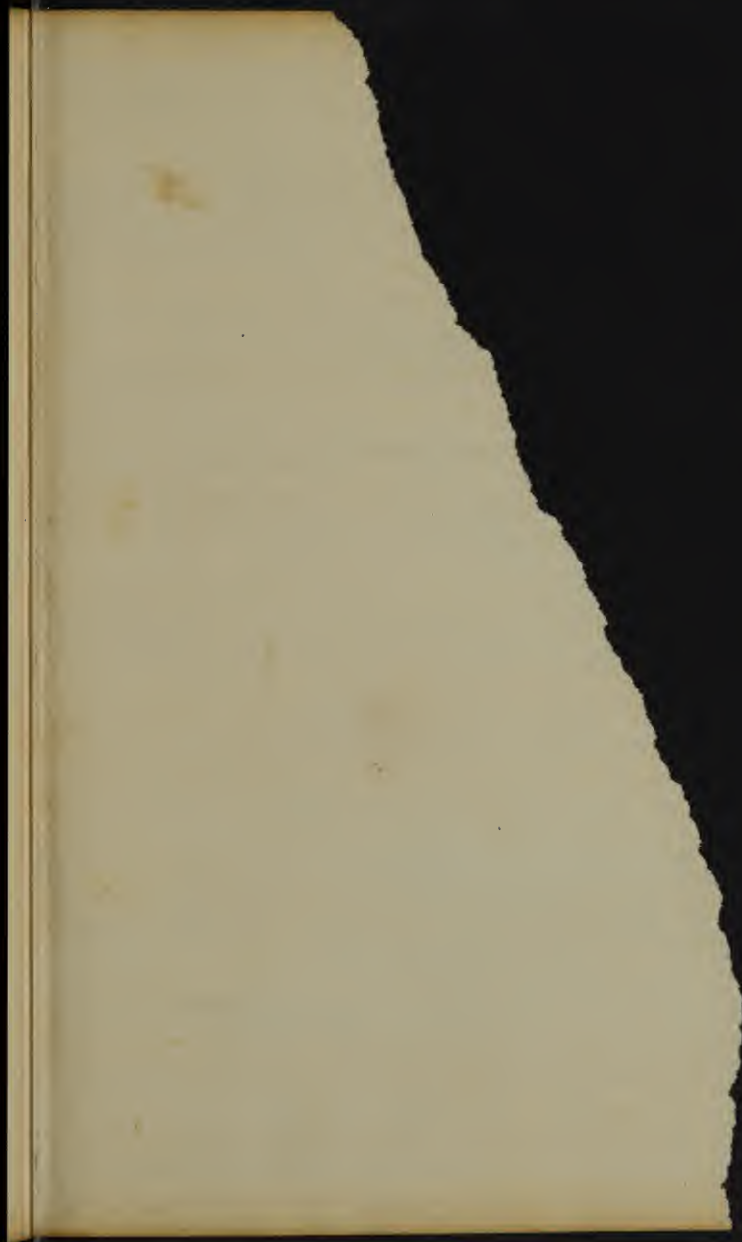
If the contract contains a clause making the debt due whether there has been compliance with a condition precedent - the clause is void & the jury are to decide whether there has been compliance 2 K 2408-

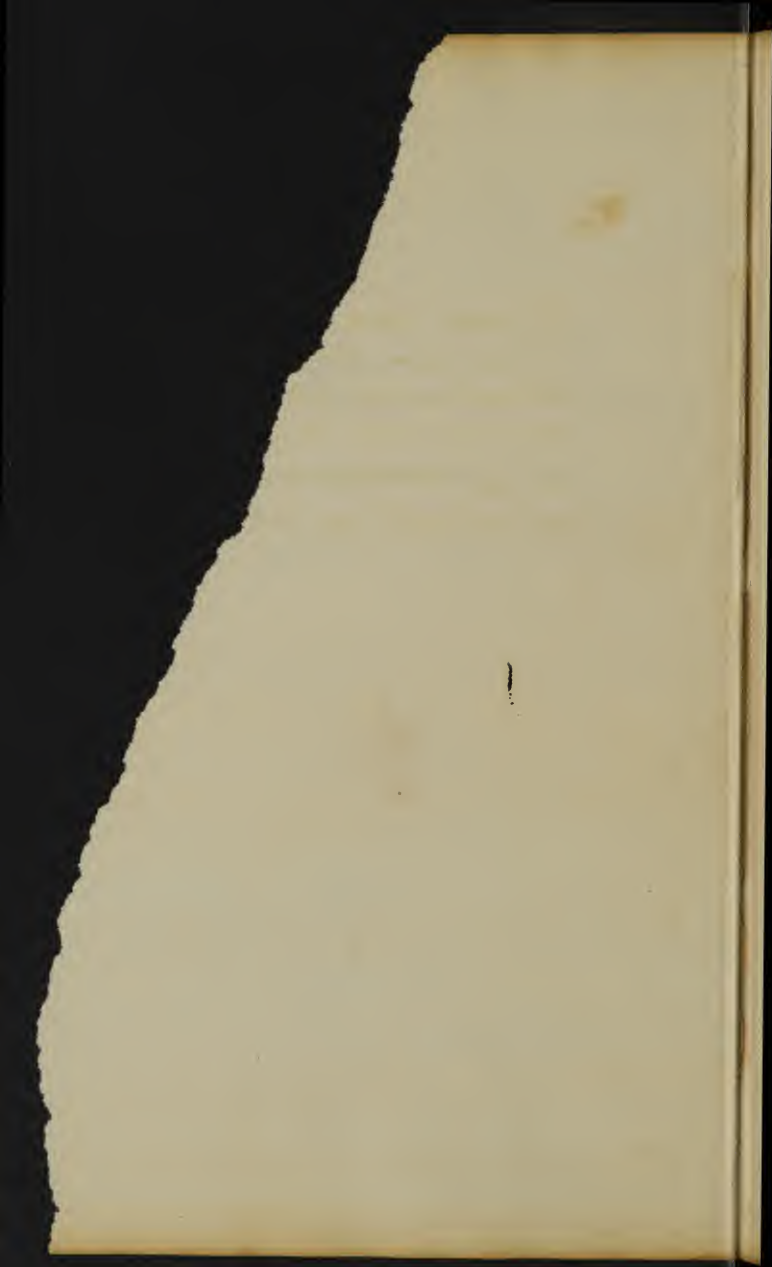
If a bond is conditioned for the performance of one of two things & one becomes impossible the obligor is still bound to perform the other - unless the impossibility was occasioned by the obligee - 12 Br 242 - (see - 18 Am 398 - 5 Co 22 - 10 Astor 26 - W Lons 29 contra) 1 Ast 170 - Ex. No conveyance or lease - house burnt by lightning -

If the condition becomes partially impossible by the act of God or the law - still the obligor is bound to perform that part which is possible - Ex Bond for a lease for 60 - years & that afterwards prohibits lease longer than for 40 - years - obligor is bound to make a lease for 40 years 18 Am 448 - 2 Br 21 - 10 Ast 284 - 6 Co 252 - 219. 2 Br Ch 737 - Polm 552 2 Pl 31 - 168 - 531 - 12 Am 209 - 11 - 3 Br - P. C 389. 2 Br 254

If the condition is impossible at the time of making the contract its operation depends upon its being precedent or subsequent - A precedent condition is one which must be performed before the right or estate depending upon it can vest or accrue - ~~and~~
A subsequent condition is one by which a right already vested is to be defeated 2 Br 156 - 6 Co 206

Rule - If a precedent condition is impossible at the time &c - the right or estate which





Condition that it should pay B. \$100. at a future
day if upon an account there balance of stock in trade
it should amount to \$400. but if it amounted to less
than to pay \$50. At the expiration of the time he
relinquished trade & had no stock - Held that he
was not liable to pay any thing 27 C L 236

Simon Church. Died. July. 9. (Monday)
1849. at 7 1/2 o'clock. P.M. A.E. 55.

If a written contract be signed by two it be said
that "it is agreed" the one shall furnish & the other
perform or pay this imports a promise to perform or pay
5 Hill 257 1 Saund 319 6 13 East 63, 74 Ben Cor. & A, 12.
East 179 1b do 352 Ch. L. 86

is the subject of the contract cannot vest or take effect
- it is void ab initio for no right or estate hopes till the
condition is performed 1 Bow-266- 28/157. Co L 205-

If the
condition being possible at the time afterwards becomes
impossible the right or estate I suppose becomes void
for it cannot vest- So if a precedent condition is
unlawful for no right can be acquired by performing an
unlawful act- 28/157.

But if a subsequent condition is impossible
at the time &c- it has no effect- the contract is in law
unconditional (Bow-266- 28/156 Co L 206) As a bond
with condition that obligor shall go to Rome in a day-
the bond is single- for in case of a bond the penalty is
deletion in presenti & a void condition cannot defeat
it- so if the condition is unlawful- 28/157.

But in case of
executory contracts as bonds &c- if the impossible condition is
incorporated with the obligation instead of being underwritten
or indorsed the whole obligation is void (Bow-267. 11 Sol 172)
for there is no deletion in presenti no distinct benefit
creating a present debt- it is rather in nature of a condition
precedent-

Statute of Frauds

There is a distinction between written & unwritten contracts
introduced in certain cases by 29 Geo 2- 13 Car 2- 28/159-
1 Bow 269-

Statute of Wills

Our Stat. so far as it extends to the same subject is substantially a transcript of The Eng. Stat. 354-

Under the Eng. Stat. -
found 2- the following contracts or agreements will not support an action or agreement unless suit at Law or Equity unless the agreement or some note or memorandum of it is in writing, signed by the party, to be charged or by some other person by him authorized (1 Pow 270 St. Ct. 216 - 18 & 19 22 & 23 159.

1. Promise by Est or Cur^m to answer out of his own estate for any debt or duty of his testator &c if not in writing, does not bind him - 2 A promise by one person to pay the debt of another default or miscarriage of another. 3 Sales or contracts of lands tenements &c or of any interest in or concerning them - That is - sales or contracts for sales - 4 Contracts not to be performed within one year from the time of making them - 5 A claim of the Eng. Stat. relating to the sales of goods of £10. value is not material here - It extends as well to executory contracts as to contracts of sales to be executed immediately. Kel 111 - 2 N. B. 65 - 7. N. 114 -

By the Eng. Stat. it is provided that all present sales or leases of lands &c or of any interest in them shall operate as leases or estates at will - only - except leases for a term not exceeding three years reserving a rent of two thirds the improved value (Rob. 2407 Bun 72 - 4 N. B. 30 - 35 16 - the former are now holden tenancies from year to year - 5 N. B. 3 - 2. St. all present leases &c are made. St. 216

written agreements, whether within or without the St. whether
specialties or simple contracts are not to be contradicted, varied or
materially affected by fraud testimony 1 Cowen 250 7 Alln 518
11 do 27 8 John 292 146 15 do 115 3 Camp 57

this rule however does not exclude proof of fraud
or the want or failure of consideration nor the enforcement
of the time for performance or a waiver of the
performance of a written simple contract 1 Cowen 250

Some sell either in time & require the bill drawn with a
usque - which amounts to a warranty, 10 John 20 do
but a bill of sale is given which contains no warranty without
warranty or engagement & may bind no recovery can be had
on the fraud representations 1 Mass 432. 15 C.L.R. 40 2 Bal
127 Nain's Old 4 Cowen 777 Ridding & Dorem

A contract for the sale of articles in solids to be
hereafter manufactured is not within the st
8 Cowen 218 24. 51 63 7 JR 14 10 Jan 264 14 Dec 58

Promises by Executors to - I have said that if E^d has
 assets to embezzle - his executors promise shall bind him - as
 assets constitute the consideration - E^d is antedate to himself
 so as to transfer the debt to him personally, (N^o 126-548)
 you must read - N^o 250 & 206 - no authority - The debt
 is not transferred to him personally - that is - his private capacity
 by assets - The mere possession of assets subjects him as
 E^d only - besides the Stat does not proceed upon a distinction
 between agreements upon a consideration & agreements
 without any - But proof of assets will clearly not involve an
 implied promise to charge the E^d personally, 54890 -
 Once broken contract by D^m King, executor Case 288 (N^o 330)

Administrators once
 submitting a claim against him to embroilment was once
 hidden & later to be an admission of assets 54891 - overruled -
 5486 - 5454 - For an admⁿ may be desirous of ascertaining
 the amount or existence of the claim without knowing that
 he has assets -

But if on such admission the executor succeed that
 the admⁿ shall pay, such a sum he shall not after wards
 deny that assets to that amount against the other -
 it is equivalent to a finding of assets to that amount
 548 - 453 - Same rule as to E^d 548

Once held that pay^{mt} must
 of interest by E^d was an admission of assets to the amount
 of the principal or rather that it cost the owner probands
 on E^d now overruled 5485 -

But acceptance of a bill

Promise by Executors

of exchange by drawer's Ex^m is an assumption of assets - Ch 82 -
112. 1748) 622 - 8 Wils 1 - 2 Stra 1260 - 3 Wils 125 - 12 - 487. otherwise
third persons might be deceived or defrauded - So is a transfer
by holder's Ex^m Ch 111 - 5 Wils 1 - 2 Stra 1260

In Eng^d tho the
promisor's Ex^m in writing he is not bound unless some
sufficient consideration be shown (as for loan) it is
simple contract only (7 W 250 - 1 Stra 873 -) for the object
is to make Ex^m liable at all events & in all cases when the
promise is written but in those cases only, in which before the
death he would have been liable on a personal promise -
(7 W 250 - Rob. 202 - 1 Wils 126) And to make the Ex^m personally
liable on his promise tho written there must have been con-
sideration & consideration which bound him as Ex^m - Thus there can
be no consideration Rob. 206 - 2 Saund 156 - Co 146 -

The consid-
eration must appear in writing (3 East 10 - Rob. 116 - 20) 6 East 30)
written agreement - quia it is as every writing containing an
express promise is a specialty - See qu.

To take advantage of this claim
Deft must have been Ex^m when he made the promise (Rob. 201 -
ant. 330) Ex^m promise here is consideration of being appointed
 Ex^m afterwards is not within the Stat^e - it is necessary to
own assets in an action on the promise for the Deft. if at all
is subjected de bonis propriis Rob. 205

To answer for the debt of another

Under this claim the

John H. Russell.

Canam. Litchfield, Co. Ct. 1848 July 4th

There are 3 distinct classes of cases in this subject. 1 Where the promise is collateral to the principal contract but is made at the same time & becomes an essential ground of the credit given to the principal debtor - & such promise is not void for not disclosing a consideration the considerations moving between the creditor & original debtor is suff. to support it. 8 Johns R 39 Leonard & Madenburgh, 9 East 348 Stodd & Sill -

2. Where the collateral undertaking is subsequent to the creation of the debt & was not the inducement to it the the subsisting liability is the ground of the promise without any distinct & independent inducement. There must be some further consideration shown having an immediate respect to such liability for the consideration of the original debt will not attach to this subsequent promise. 8 Johns R 39 2 W. 94 St. v. Hutchinson 7 R 201 Charter & Buckle 5 East 100 Cairns & Walton -

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3. A third class is when the promise to pay the debt of another arises out of some new & original consideration of benefit or harm moving between the newly contracting parties, this class is not within the R. 1 Saunders 211. w 2. 8 Johns 39 -

Promise to pay the debt of another

general distinction is to be observed - if the promise made for the benefit of another is original it is binding, tho' by deed - Lees v. Collett 1057. Lawr. 227, Wils. 306 - Exp. 101 - Sum. 1888 - In the latter case it is a promise to answer for the debt of another - in the former it is not - Note the word collateral is not used in the Stat.

A promise is said to be original - 1. When the third person for whose benefit it is made is not liable at all to the promisee so that there is no debt due on his part - Rob. 209-10 - Peake E. 212 - Hull 281 - Sum. 1721 -

2. When his liability is extinguished on the making the promise. Rob. 223-4 Contra 1 Dowd. 353 -

3. When there is a new consideration arising out of a new & distinct transaction & moving to the promisee (Rob. 232 - 3 Exp. 286) so that the debt is only the measure of what is to be paid for another object - But when the promise is merely in aid of a subsisting & continuing liability on the part of such third person as to procure aid of from him - is where the promise is ^{intended} to furnish merely an additional security - It is collateral & therefore within the Stat - 2 Le. 457 - 5 Meth. 205 - 2 Wils. 94 - Fr. 306 - 2 Le. 1085 - Leit. 25 - Exp. 101 - 1309 - 158 - 1743 - 120 - Le. 2 - 1089 - Lawr. 460 - Peake E. 212 - 1. Ex - A says to a merchant "deliver goods to J.S. & charge them to me" or "deliver them & I will pay you" the promise is original for J.S. is not liable at all & is the original debtor. 2. R. 81. 1743 120 Le. 2 - 1089 - Rob. 207, 16 It is not a promise to answer for the debt of another

To pay the debt of another

And a new said defendant J. S. (retray) 2 if he does not pay you I will it is collected (Case 22) Here the intention is that the charge should be against J. S. the reverse - 144 H. 12. D. 40. 1086 Vol. 29 - Ex. 102 - 1 it is therefore a promise to pay J. S. debt in view of his inability & to procure credit for him -

So "surely my master will bread & I will see you paid" - No case collected at because of the intention in the last case - (cited in 2 W 80 - Rob. 222 - D. 224 - Bos. 158 - Sack 8, out of date) L. Mansfield once held that such a promise before the delivery of the property was original there being no liability on the third person - cited Cas. - 228 -

This opinion however has since been overruled 2 W 81. Rob. 5-4. 209. 18 sed qm. - Whether L. Mansfield's construction is not correct - in other words whether the intention is not that the promisee shall be made the debtor in the first instance - at any rate it is now held that when the promise is in this form the court is collecting the intention and at liberty ~~and at liberty~~ to consider the circumstances of the case & situation of the parties 1 Bos 158 Rob. 212-23 - 2 D. 40. 81 per Bull. &

So if you do not know L. S. you have me & I will see you paid - L. S. is to be first charged. 2 W 80 Ex. 101-2 - Rob. 210 -

So a promise to me that in consideration of your letting a horse

A promise to pay to a sum due from C. if B will give up
a loan he has on C's goods - is within the St. of C. L. 148
and 3 Burr 1086 3 Esp 86 1 Hann 211 C.

2 Esp 86 L. in 2 H 8081 thinks the debt of B. must be the most
certain one of B's, the destination then contained in is a current one -
1 Hann 211 a. n.

The question is, to whom was the original debt given?
17 John 115 a. n.

Said in 5 Mand. 236 cites 4 Cow 462 that a promise to
pay the debt of another is not within the St. if founded on
a new & distinct consideration as where A. in consideration of property
transferred to him by B. promises to pay a debt due to C.
from B. So where promise in consideration of the promisee's assent to
take an ass. 10 Mand 463 21 C. L. 145

Said in 5 Mand. 236. that a plea of St. fraud is bad for
if it is necessary that the promise should be in writing it
is a fact the pff. must prove under the genl. issue - special
verdict contra 15 C. L. R. 46 4 B. & C. 547 Larr. n. Smith & Liff

The promise being entire if void in part is void in toto
21 C.L. 145 & 1 R. 201 & Kent 223 Ex. a promise to pay the
rent due if landlord will release prop^y & discontinue distress
is good & also to pay the arrears rent which is void
by St. the whole promise is void -

Off. having issued his ex^{ce}pt^o of fieri facias & with
Off^r consent conveyed all his prop^y to debt who thereupon
undertook to pay Off^r the debt due from St. the Off^r
withdrawing his ex^{ce}pt^o held that debt promise was null
within the St. 32 C.L. 366. In Ct. a levy on the good
property in the realty otherwise no consideration from
Off^r.

To pay the debt of another

to 2d he shall redress him is collateral. This is undertaking to answer for the default of another to insure him with - per 2d. where in the bailment
Rob-210.32- Ld 2d. 10th 248 D.R. 1045- Holt 606
2 Ld 152 13a 5

As a general rule a promise that a third person shall do an act for the not doing of which he would be liable is collateral - 2d. 1080-
Ld 2d if he wants not to be liable - Ex- 2d a promise
3d an sufficient consideration that C. shall pay &
if not that he will pay - & nothing being to it
the promise is original - per C is not liable at all
Rob-228 Ld 2d 202

For an agent buys goods at auction
& does not name his principal the agent is bound without
writing (Reck 2-23- Binn- 1721) for he contracts as for
himself - Semble to make the promise collateral it is
necessary that the party for whom the benefit is
should not only be liable but that he should be or become
liable at the time when the promise is made. 2d 2d
1080- Rob 219- 22- 32- 1d upon the same contract
which promisor makes or assumes - see 2 East 325 cont.

If the promise is by one
of several persons already ^{jointly} it is not within the Stat-
for it is not to pay the debt of another - 2d Promise
to pay with 4 one of three Deft - Rob. 229, 2d 205-
Comb- 262 - 2 East 325 See 2 E. 486 -

When an agent

To pay the debt of another.

to the distinction under this class of cases. The promise is original the common action of Indebitatus lies. But not stating the special agreement is proper for the promise is the original debtor - Deem where the promise is collectible - there a special declaration is proper & necessary - Rob. 210 - Burn. 513 - 2 Lev. 263 Dr. Lee 1055 -

2^d A promise in consideration that promisee will extinguish a debt against a third person is original for it is not in aid of a continuing liability in the third person or to obtain credit for him. Ex. Burn. C's bond & I will pay the debt for him Burn 1588 - ergo admitted N.E. 130 - 90 Rob. 222 - N.E. 130 & East 325 - See you - whether the rule is not correct - What is the promisee to pay? not the debt of A - for it is extinguished - the former debt against A is only a rule of damages & the consideration is merely sufficient it being discharged & extinguished to promisee -

When promisee is purchaser of the debt of another & clearly not within the Statute. This is a promise not to pay the debt of another but to pay for a transfer of it - Rob. 226 N.E. 130 - & East 325 -

3^d So in Williams vs. Lefor where the Chancellor came to distress C's goods for rent - the Off. to whom they had been assigned promised to pay the rent if Off. would not distress - holden good tho C remained liable - Off. had

If A. say to B. furnish C. with goods & will
guarantee the paper! The A. is not bound to furnish
yet if he does he is liable on his guarantee
34 C. L. 21 per Pollock J^d / 1111 also 1111

2 Sand P. E 212
5 Sand & M. 228
5 Mend. 598

A promise by one person to indemnify another for
becoming a guarantor for a third is not within
the St. & need not be in writing & the assumption of
responsibility is a suff^t cause - 4 Mend 187

2. applies only where promise stands in the relation
of kinship to another who is the principal debtor and
if promise B on a suff^r consideration passing
between themselves that a stranger shall pay or
do any other act this is an original undertaking
4. Hill 179. But if the third person wishes to obtain
credit of B. or forbearance of a debt he owes him
& A. comes in as his surety, the promise must be in
writing

had a line which began up in favor of Deft on his
promise to pay (Surv. 1880- Peak & 210- 2 East 323-) the
consideration in this case arose out of a need &
distinct transaction & more or less promise (Surv
1880- Rob 232- 2 Esp R. 80) It was in consideration of
the fraud being discovered in Deft's favor -
The debt was only the measure of the sum to be
paid - Lat 25- 2 Day 359. 3 Esp R. 80 3 East 325-

Where
one is under a moral obligation to pay for a benefit
received by another a fraud promise will bind him
E- the promise furnishes a benefit. The overseers
afterwards promise to pay for it - the promise
is binding. A promise made by a principal to his agent to indemnify
the latter for a loss sustained by him in the principal's service
occasioned by the wrongful act of another is not within the St.
1st. 16. 519. J. Miscellaneous Rules

A promise to pay a certain sum in consideration of prom-
isee's withdrawing a suit against J.S. for assault &
battery has been held as original for there was
no debt due from J.S. - It did not appear that there
was any default by him. see 2 Day 457. Wils 305-
7th 204- Rob 208-33. Peak & 214- - The promise
was not for performance of the same duty J.S.
was never liable to pay the particular sum promised
or to the particular duty which the promise intended
to create -

There must exist a debt or duty, ascertained
or capable of being ascertained at the time of the

Miscellaneous Rules

promise. Vol. at sup. - to bring the promise within the Stat.

But a promise to pay on condition of promisee's staying a suit brought against D.S. for a debt is collateral - The debt subsists against D.S. & no lien or interest assigned or abandoned by the promisee Vol. 204. 33
2 Wils. 94 Burr 1887 arg. 4 M 201 Dec 2 1834 312 -

I promise
that in consideration of promisee's perceiving an action of
tresser against D.S. - the promisor would pay the claim
if within the Stat. 2 Dec. 455 - Same duty. It is to
pay the same sum which D.S. is liable to pay -
- the same of the property

I suppose the promise to be
in consideration of promisee's withdrawing the suit
- would it not be good in law as a retract discharge
off suit to bring another suit - so that the liability
of D.S. is extinguished - Is it not good - here a
retract then no retract operation -

Promise to pay the
debt of D.S. if Off. would release D.S. taken on
same process is collateral I suppose - for the debt
continues & D.S. may be arrested again - seems
I conclude if he had been taken on final process
& were then arrested released - for releasing would
discharge the debt Burr. 2482 - 17255 - P. 525

9 P. 421. Rest 57. com -

Some have supposed that when
there arises a new consideration a new promise to

As between diff assignees of a share in action by
express assignment from the same person the
one who in time will be preferred tho he gives
no notice to the subject assignee or debtor
But to secure the rights of the first assignee
as between him & the debtor the latter must
be notified for if he pay the original creditor
or subject assignee before notice of the prior
assignment such payment will be good & still
230. 11 Mf 488 4 clo 450

When credit is given on the sale of goods the buyer
can neither take or sue for them until he has
either paid or tendered their price 15 Mees 225 1 H. Bl.
323 3 low 84 6 B & C 360 440 941. But if there be
an absolute delivery without receiving the price
the property passes to the vendee 8 Mees 247 - j do 496
13 Com 434

Therefore elements to the declaration complete a promise in writing Root-77. & 74. 350- gu in 8th as written contracts containing express promises are specific. Some of such contract is executed is bar of another action. Rob-202 n 28th 49. Bull 579. Reg 450- Greater strictness is required in a bar than in a declaration- But it is necessary in declaring as in pleas is bar to show a consideration- 7. 22-350- Rob-202-

A parol contract to pay the debt of another & also to do some other thing is not thin the debt in toto- for if one part of an entire contract is void the whole is so- no severance- 2 Vent 223- 742-201- Rob-212 n 172 n- 251- 1 W2-130- Dents 4205 n Both parts must be declared on-

III. In consideration of Marriage

This clause relates not to promises to marry- these are good by parol- Bull 280- 1 Fent- 179. 1 P2- 130- 1 Stra- 24 Rob 100- 1 Lee- 65- 411 Com 411 / Rob 190

It relates only to agreements in consideration of marriage- that is- such as are made in contemplation of marriage settlement or family provision- Paw 277- 1 P. W. 618- 5 P. Ch- 526- Rob. 190

When to be binding must be written or signed- no exception to this rule except in case of part performance- Commonly doubted whether a parol agreement of this kind would not be good if it was stipulated that it should be reduced to writing, Paw- 279. 2 P. Ch 1 Ch. Ca. 135

If it appears from the bill that the contract was not in
writing & no circumstances are alleged taking it out of
the H. a demurrer is proper - otherwise it must stand
this matter in law or insist upon it by way of defence
in his answer - if he admits the agreement & does not
insist upon the H. he cannot make the 6th & the
seventh issues not be joined 2 Paige 178 3 Annot. 644
2 Bro. C. C. 566 557 1 All. R. 230

In consideration of marriage

But such stipulations it seems require no evidence
I do not know the case out of the Stat. 1 Row 287
2 Ld 402 - 3 Ld 504 - Rob. 196

If there can such stipulation
is made & the execution of it is procured by fraud of
either party & then marriage takes effect Equity will
relieve - 1 Eq. Ca 19 Rob. 198 - 130 D. 2 Ld 526 - 1 R. 11. 218 - But
this is more by way of relief against fraud I conclude
I cannot promise on marriage is a sufficient consid-
eration to support a settlement made in pursuance
of it after marriage or to support a promise in
writing after marriage. 1 Str 236 - 2 Ld 116 - 1 Ves Jr -
196 Rob 193, 260

A letter signed by one party, is a writing
within the Stat. 1 Fomb 199. 2 Bro. Ld. 52 - 3 Ld 315. 1 Row 287
1 Ves Jr 330 - 2 Kent 361 - 8 Ld 550 - 3 Ld 503 - Rob. 105. 90
- but it must appear that the other party accepted the terms
contained in the letter & acted in contemplation of them &
proceeded to marry otherwise it is not binding - Thus where
the party to whom the letter was sent was ignorant of the
promise contained in it at the time of the marriage it
was not decreed. 1 Fomb 199. 93 - 2 Bro. 65 - 1 Row 287. 90 -
9 Mod - 3. Rob - 107. 92 -

A letter written to one's own agent
stating the terms of an agreement already made by
party has been held sufficient - 3 Ld 503 - Rob. 121
This is not a written agreement - but a written mem-
orandum of it - written evidence

It must furnish distinctly the terms of the agreement
 - See it is mentioned - 1 Term 179. D. E. 560 -
 Stra - 126 - 1 C. 12 - 2d - 106 - 91 - 18 Paw 290 - See
 2 E. 6a - 17.

As to the sale of lands &c.

Lands or of any interest in them 1 Root 57.

Nothing carried.

to land if sold in contemplation of severance is not
 within the state. In Green v. Green 2c Rot 126 - 6 E. 102
 602 - 1 Selw. N. B. 862 - 11 E. 102 862 - 1 Com. 100 - 11 - 80
 Peck - 2 214. 1 Lev 65 - D. 32 - 182 - 2 W. 202 - 120. 397.
 2 a parol agreement between the owner & purchaser
 of the land that each shall have a certain part of
 the soil is good. 1 Lev 65 - 120 - 397. for the w. is not
 considered as land.

As the 2d - 1st - parol leases for three
 years is good - such agreement however appears to be good
 independently of that provision. See 1st -

Formerly doubted

whether a parol contract made land or not if it was
 part of the agreement that it should be written. 1 Paw 279
 140. 157. 1 E. 6a - 19.

Now settled that this makes no difference
 1 Paw 281. 2 - 16. R. 170 - 1 Ver 224. 6 R. 1. 6. 115 - Rot 147
 1 E. 1102 2 R. 1. 553 - 65

Parol promise to pay for land

3 Day 484 If A. holds lands in trust for B. & agrees by parol
to sell them & account for the profits this agreement
is not within the St. 10 Mass 439. But if the person
buying them agrees that by parol that B. shall have
them again on repaying so such contract is within
the St. 5 Mass 162

There there is an entire contract to do several
things some of which are within the St. & some
not the St. applies to all 7th 301. 1 Geo. 2. 89. 3 Geo. 2.
10 Geo. 2. 64 2 Geo. 2. 44 33 Geo. 2. 109.

Wm. Woodman

Canot represent by the owner of land that if another will purchase
it of another & he will surrender all claim to it & cannot be
given in evidence at law in an action brought by such owner
against such purchaser to recover part of the land 18 Mass 588
see 6 other 64 166 62 18 586

tought is good, 1 East 30-49. But our court of errors has decided that the law does not imply a promise to pay the value. One decided in Est. that a parcel agreement by grantor at the time of granting to pay for deficiency in the supported interests was within the Stat. Mich-22-1 East 78- Contra since 1 James North 46- in that case notes were given for the purchase money & the promise reciprocal. Aug. 800- reversed by 8 of En on Est- principles Dec 23-

But hard agreements for the sale of lands are binding in some cases the Stat notwithstanding

Such agreements are good under the Stat- if promissible consistently with the spirit of the act & rules of evidence - there is no inherent invalidity in the contract the difficulty is in proving it - the Stat merely introduces a new rule of evidence to prevent frauds & perjuries -

1. Where there is no danger of fraud or perjury in enforcing the agreement the case is decided not to be within the Stat spirit of the act - Ex- 2 if once a bill filed for specific performance the Def^t in his answer confesses the agreement - no danger of fraud or perjury in acting on such proof Bow 27192 1 Ke. 221441 O^r Ch- 208-374- 2 Ct^e-100.53- 3^d 3-3312- 600- 2 Br. Ch-568- Amb-586- See 6 Ves Jrⁿ 37. 554-

Besides

say Bow 292- the contract is in writing - that is - in the answer

For the sale of lands

In this case if Deft. does not insist on the Stat. he is clearly
bound - Rob. 156 - 2 Br. Ch. 506 4 Ves. p. 23 - Peckh. & 216
- So if he properly submit to a decree of performance - Vol. 156 -

24
Deft. alleges a written agreement evidenced by a parcel and will
be good if Deft. does not insist on the Stat. Rob. 156 -

211 - to the
first example - if the Deft. does admitting the agreement on
the Stat. by plea - can the agreement be enforced Rob. 159
Br. Ch. 208. 374 - Peckh. & 216 - see 2 Ld. 3 - that Equity would
decide if the Deft. has insisted on not performing it 2 Ld. 155
Deft. did insist on the Stat. by pleading yet he having
confessed the agreement in his answer the plea was
overruled & the ~~agreement~~ agreement decreed - 2 Br. Ch. 508 -
211 502 - 500. rule laid down generally, that an agreement
confessed is out of the Stat. - Decided contra at law - that
is - that if Deft. having confessed the agreement by answer is
shewn to insist on the Stat. he is not liable on the
agreement - 2 Wils. 83. 4 Wils. 23. 6 548. 23
Rob. 230-158 - 2 Br. Ch. 563 -

So in 2 Br. Ch. 553 the plea
of the Stat. was allowed by Lord Hardwicke tho the agreement
was not denied - but the decision was on the special
circumstances of the case 26. 569 the agreement was
incomplete only general heads by way of instructions
to an Ld. - Particulars terms not settled - Lord Ken-
dall there was taken - See Rob. 160 2 Ld. 569 3 Br. Ch.
45 - 2 567 here the agreement was not enforced

A. leased to B. W. for a term of years during
the term it was agreed by parties that if A. would make
certain repairs B. w^d pay him £5. additional and the
renoval of the term should upon being completed. Held
that the agreement to pay the £5. was not within the
H. instrument as no additional interest in the land
passed to B. he having the same interest as at first -
and the agreement to pay for the renoval of the term
was not an agreement "to be performed within one year"
as no time was fixed for performance by landlord -

23 C L 216

An agreement to sell land does not imply a license to
enter & cut trees, nor a license to enter simply with
authority to cut timber of value \$5 331- No tract of timber
is cut owner of land may remove the timber 3 March 188
So where tenant for years of mill & machinery removed
the machinery & it was sold on aft- capt Meun held
that the purchaser acquired no title to land & M. 826

It remains *quæritur* res. etc. 170 Rob 150 - 11th 20
 session Rob 238 he says it seems to be now nearly established
 that D^{ft} may resist & plead the Stat. cited 6 & 8 48
 Rob. 1000 - see Peake Ex 216

Insisting on the Stat. present
 a remedy on the agreement the rule itself that confession
 in the answer takes the agreement out of the Stat
 seems arbitrary & groundless - & if the court has
 willed the agreement to be by, how can enforce in
 one case - that is - when it is not pleaded - why not in the
 other? A little change of phrasing in the one case & in the
 the other -

It is also a question whether a D^{ft}
 in Chancery on a bill for specific performance of a parol
 agreement for a sale of lands, &c. is bound either to
 confess or deny it in his answer (170 Rob. 150) & decided
 by Dr Mansfield that he is - cited by Dr Henslow
 3 Br. Pl. 566 - 11th 21 - con Rob. 150. 50 2 11th. 155
 sel. 4 Ver. 24. Dr Henslow of the same opinion & that
 the only effect of the Stat. - is to proof of the agreement
 is to prevent the P^{ff} from proving it aliunde - 2 Br Pl -
 56. 170 Rob. 137.

L. that if D^{ft} denies it P^{ff} cannot
 prove it by parol 6 Ver. 29. Dr Mansfield & Dr
 Mansfield - Dr Henslow holds that confession takes
 it out of the Stat - Dr. Roplin - Eyre & Elean of the
 contrary opinion - 24 Br Pl 65 - because compelling a
 D^{ft} to answer a parol agreement lays him under

a temptation to commit perjury, - What then? Does not this objection hold equally in every case in which Deft. in Chancery is bound to answer, perjury by Deft. is not what the Stat. intended to prevent - Besides this objection might be urged against compelling an answer even if the agreement were written - in which case however the Deft. is clearly compellable to answer - If he is bound to answer or deny it follows that his unrepugnance to the agreement out of the Stat. & thus investing in the Stat. will not avail him - Vol 180 per if it would not avail him compel him to answer or deny? 1 Term 171 -

It has also been held in Ex. that a party to a parol agreement for sale of lands &c. - that he deny it by evidence shall be bound by it if a previous unrepugnance of court can be proved - 8 Co. 117. 1 Paw. 293. qu. can it be proved -

Upon the principle that there is no bargain of land or perjury in the proof of a parol contract for purchase of lands be at a vendue sale before a master in Chancery under an order of court is binding - 1 Paw. 291 - 1 Ves 215. 20 - 1 H. Bl. 287. 12 L. 324 - Rob. 115 - How could this be if the Stat. made the parol contract void?

Is a parol agreement between the Solicitors in Chancery in a suit between mortg. & mortg. decree - 3 Br. & L. 334 Vol 115 -

A. with B's money purchases land of C. It is said that a
 resulting trust to be cannot be created by fraud. 1 P. W. 321
 2 B. & C. 84 Rot. 94. Contra 1 Solms R. 145 n. S. C. 1 Solms
 6 153 2 Vent 361 1 Vern 367 3 Solms 221 n. d. 11 d.
 96

Via. 3 Day 481 a j.

If there is a bona fide contract to convey land & nothing
 paid & consideration afterwards withdrawn he has no title & for
 this reason to convey he is liable to sue damages. 2 Muel
 399 2 B. 1 1078. Even if he fraudulently refuses to perform
 there is addition to the contract & is a contract 3 Solms 115
 7 B. 1 358 13 d. 108 11 d. 11 627 he shall pay the
 difference between the agreed price & the market value
 2 Muel 1106

To put the vendor of real estate in fault vendor
should demand in deed wait a reasonable time
a then present himself to receive it & Mand not etc.
6 Comw 1.

A. agreed in writing to sell B. several lots of
land & afterwards by parol the parties agreed to waive
the contract as to one lot. Held to be void for
the contract of waiver is an attempt to substitute
a parol contract for land in lieu of the written one
By C. L. 34. The court seems to think that altho, generally,
written contracts after their ex^{ecution} may be altered & varied
by parol yet this cannot be done where a Statute requires
the contract to be in writing & seem to doubt 3 M 591
1 Ex C. Thompson & Roche 111 221

Turning to several Eng. decisions a parcel contract respecting
 an interest in land, & is inferable from immovable
 facts in proving, which there is no change of person.
 Ex- Sale of lands by absolute deed but vendor at the
 execution gives an obligation to the vendor to the exact
 amount of the consideration - necessary for purchase - &
 pays the taxes, does not amount for profits - pays
 no rent & pays interest on the obligation - from these facts
 it is said a trust is implied for vendor - that is - he is considered
 as mortg. by virtue of a parcel agreement implied or
 inferred See M 85 - 2110 427. 2 V. 275. 2 L. 11. 1 - 5th L. 522
 12 L. 60 - 2110 420 - 1 P. W. 511. 2nd 549. 11 L. 108

D^r Other exceptions to general rule introduced by Stat^t
 13 L. 500 are admitted on the principle that an act made
 1 Bow. 294 to prevent fraud ought not to receive such
 15 L. 171 a construction as would so much protect
 & encourage it - for the act is to be liberally
 explained -

11 L. 131. So that when a party is not performing,
 11 L. 172 a parcel agreement will prevent a greater parcel
 13 L. 296 on the other than would arise from a mere breach
 13 L. 600 of the agreement itself - he is in general bound to
 11 L. 221 it in chancery - therefore a parcel agreement performed
 11 L. 783 is partly performed on one side at the request or
 2nd L. 100 with the consent of the other party will bind the latter
 2 L. 375 - Et C. Law to be by parcel for 20 years - Reuter under
 --- 619 the lease & incurs expenses in improvements.

The contract is enforced in Equity 11 Ves 383 - 11 Ves 383 - 278
 13a 74 14th - 299 - 11 Ves 389 7 Ves 7 - 241 - 3078 14th 120
 Root 77 - Otherwise he might take advantage of his own
 fraud - for his accepting or permitting part performance
 by B - (not intending to perform himself) is in itself a
 fraud - 2 Wodth 483 - 2 Eg Ea 48 9th 37 12th 561
 13th 417 13th 297

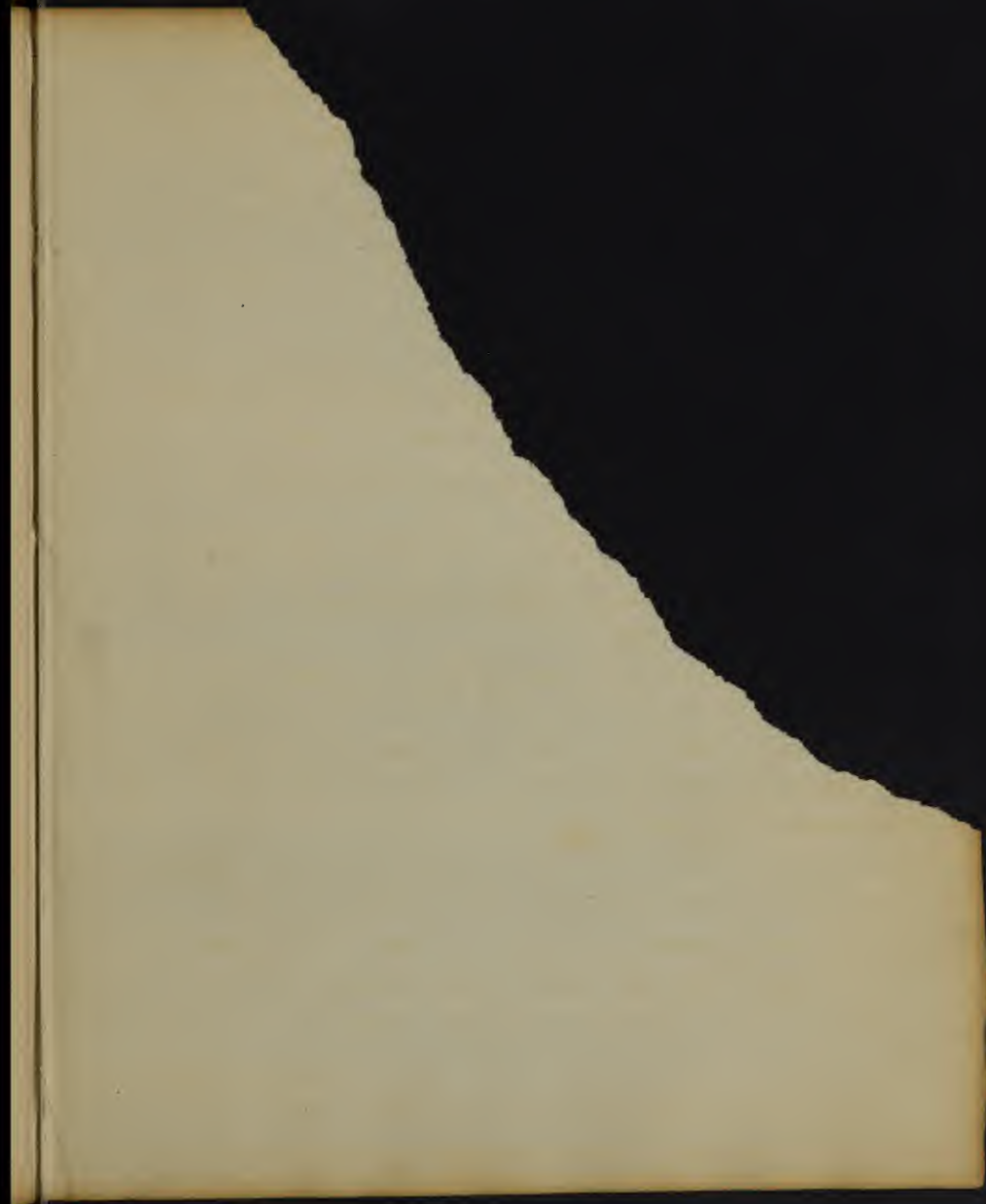
Besides the acts done - acquiring
 afford presumptive evidence of the agreement & thus
 the danger of perjury is diminished 10 Ves 309 - on whether
 this circumstance has any operation? 10th 181 -

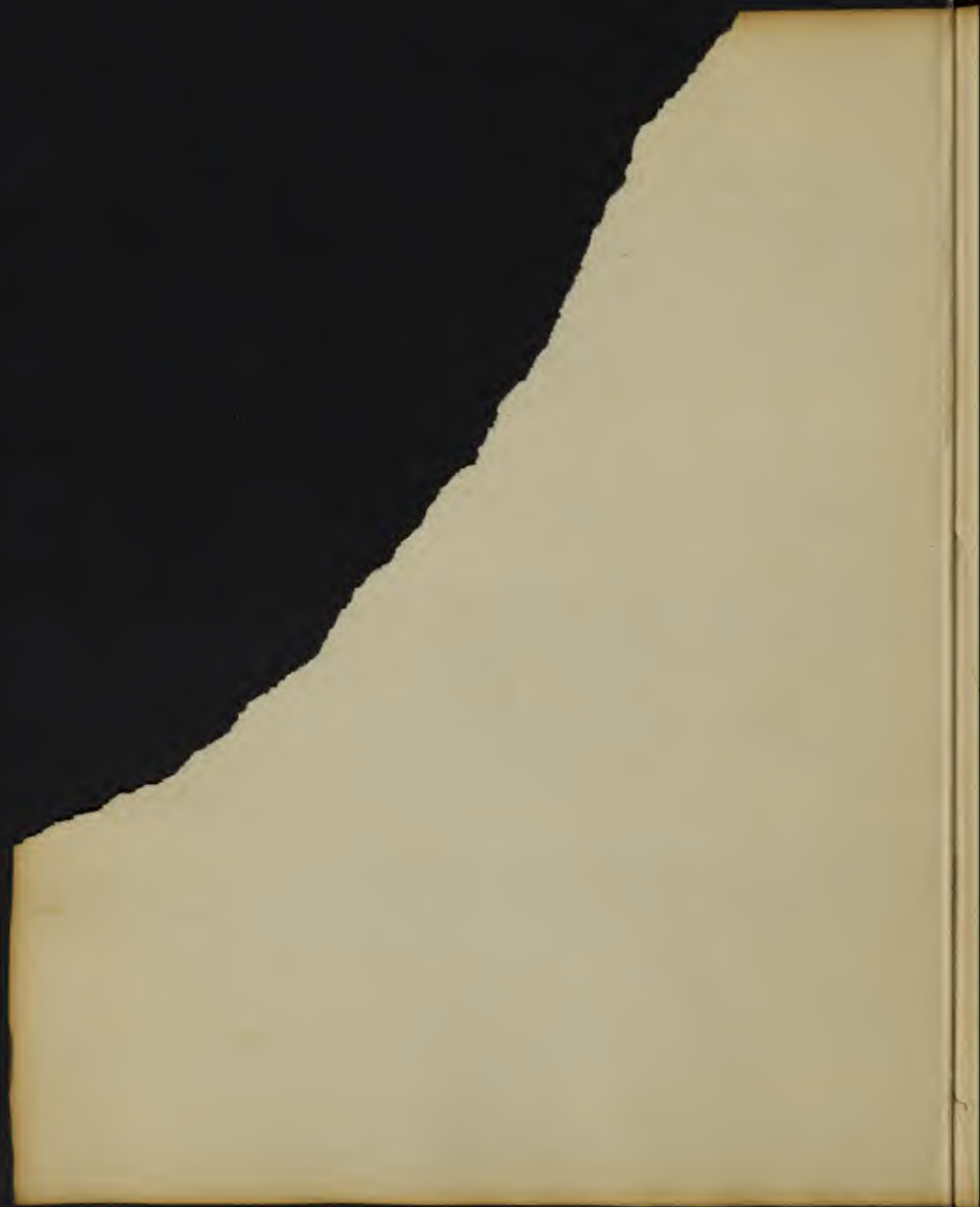
In such
 a case the agreement has been enforced tho' the terms
 of it were not precisely settled by the parties. 10 Ves 297
 2 Eg Ea 48 - 11 Ves 523

Delivering possession of land in pursuance
 of a part agreement is a sufficient part performance by
 the vendor - 10 Ves 299 2 Ves 363 - 485 - 10th 24 2 Eg Ea
 48. 6th 102 - 10th 77 10th 14 - 10th 83 2th 40
 10th 518 7th 747 -

And taking possession under
 the agreement is deemed sufficient notice to a
 subsequent purchaser 10th 202 11th 365 2360

So payment of
 money as part of the consideration of a purchase by
 part agreement has been held to be such a





in performance as to take the agreement out of the Statute
 Paw 306. 2d 182. 5th 520. 2d 2- 4 Ves. Jr. 20- 1st 83
 222- 180 64- 120 175- see 8 Ves. Jr. 713. 180 182-55 2d 180
 2d 60 40- 7th 12 234- 1st 2 22- 180 182- 2.

Since the payment of earnest 6th 500 180 182 59-
 this is not in part performance - not subsequent to &
 in part performance or performance of the agreement but
 a mere solemnity in making the contract a firm in
 stipulating - In this case see Paw 308- earnest
 may be recovered for nonperformance - & for payment
 of earnest does not take the case out of the Statute 6th 500
 4th 18- 20 180 54- The earnest truly may, can be recovered
 back -

Questioned whether the receipt of the money
 in part performance may be proved by parol Paw 307. if not
 the rule truly is in 180 183- in 8th 4- it was proved
 by parol

A part agreement in part performed by vendee will
 be deemed against the heir of vendor Paw 309. 2d 2
 180 300

But to take the parol agreement out of the Statute
 this ground the act done must be such as would prejudice
 the party claiming unless the agreement was enforced
 - Performance by one of the parties will
 not bind the other to a decree 7 Ves. Jr. 241- 180 183- 62
 6th 20-

and the act claimed to have been done in
 part performance must be such as in the opinion

of the court would not have been done with a view of
to perform this agreement - Hence it is not considered
as part performance - Et Liepee agreed to take a new
lease & continued in possession - 3 Ves. 378 Rob.
139. 51. 62. 1 Paw. 309. 1 Ba 74 2 Br Ch 561. 3 Atk 41
Limb 586. 3 Br Ch 561. 1 Foul 175. 1 Br Ch 412 1 Atk 12.
6 Br Ch 45.

Giving possession is sufficient - Term of giving
directions for conveyance - going to see the estate &c.
these are merely introductory to a conveyance -
1 Foul. 175. 3 Atk. 6 Br Ch 45. Rob 139. 62. Limb 586
1 Br Ch 412. 3 Ves. 378. 34. 379. 3 Br 41.

Marriage truly
is not considered as part performance of a parol
agreement in consideration of marriage - as between
the parties to the marriage for by the terms of such
contracts they are not to have effect unless the
marriage takes place - To consider marriage
then as part performance would take every case
out of the Stat. & leave the contract as at C. L.
1 Paw. 309. 1 Ba 74 3 Br Ch 561. 3 Atk 38 1 Br Ch 618 Rob 196

But

it is said that a parol contract in consideration of
marriage by a third person as a settlor to one of
the parties is taken out of the Stat. by marriage
if it takes place with his consent - Hence a fraud
would be practiced on the parties to the marriage
1 Paw 298 2 Ves 373. 2 Foul 201. 1 Paw 209

Consideration money paid for^r takes a valuable
improvement made in egg takes a care out of the
to 2. C. L. & Co. London at least 20th Dec 1881—

A & B by parol agree to exchange farms
A gives to B. the note of C. to be forfeited if A
does not exchange farms — A. then refuses to
exchange — holds that A. may recover of B. the
money he receives on C's note because the contract
to exchange being by parol is void for want
of consideration 15 Idem 5104

Where one by a fraudulent representation of being the owner
of land induces another to sustain losses upon it in the
expectation of becoming joint owner the latter on discovery
of the fraud may annul the contract & remove on the
common count for work & labor & it is no objection that
the contract is for an interest in land & not in writing,
16 Wend 25. 2 Allen 415 15 Felt 503. 13 Wend 54

But performance of a bond agreement will not take a case
out of the St. unless the terms of it distinctly appear or are
made out to the satisfaction of the Court. 1 John. Ch 131 284
1 Sch. & Lef 1. 459 3 Atk 503 6 N. 470 bond 586
1 N. 221. & then if performance is decreed it is on the
ground of fraud. 1 John. Ch 284 1 N. 221 1 Bro. 417
3 N. 276

Butterly compensation in damages, is made instead of specific
performance where damages will answer the purpose of its remedy.
1 John. Ch 284 382 713 1 N. 159 2 Sch. & Lef 1. 549, 100 22.

To show the wife was allowed by the husband during
coverture to receive the interest of a certain sum which
he had before marriage agreed to settle to her separate
use - The agreement was adjudged, binding on the
ground of part performance 1000-204 1 Hen. 207. The
coverture husband is bound by his own part performance -
no prejudice to the wife - Note the plea pleaded on
the special circumstances - So setting down timber
in performance of a marriage agreement was not deemed
a sufficient part performance - 1000-204-2 2 Cy. Ca.
29-

Our Court of Chancery holds that part performance in
paying money does not take a case out of the Statute - See
holding by S.C. that a complete performance on one
side by payment of money to the S.C. - the S.C. - have
since taken part payment sufficient - 2 Dug. 225 that
payment of part & making repairs takes it out of
the Statute -

Upon the principle to prevent fraud even
a written contract respecting an interest in land
or any other subject may be voidable by proving the
part performance if there was a fraud in the execution
of the instrument - In Grant having obtained a
deed refused to execute a defeasance according to the
agreement - 206 120 3 10th - 389 - 5 N. H. - 425 - 12th - 188
10 W. 620 - 2 10th - 203 2 Cy. Ca. 20 1000-204 some of a
man's man & 10th - 389 -

So such part without more

For the sale of lands

Le prout where it is only inducement to an action
for fraud - for the action is not on the contract.

2 Day. 531 2 the same may be done in case of
mistake in the execution - 11 Barb. 188 93 1 Ves 457

2 Atk. 203 - 1 Bar. 433 - 2 Atk. 288. 6 M. 671. 1 Kish. 399

So a written agreement
as above may be controlled by a parol one to reflect con-
equity - 24 Whittier agreement afterwards discharged
by parol 2 Ves 299. 1 Ken 240 Bar. 294 - This rule
is peculiar to Equity

In C. by 11 C. 2 - Indictment for
fraud & corruption lies on a parol lease & the agreement
as to the rent may be given in evidence to ascertain the
amount. Exp 20. 105 - 5 M. 327. 11 C. 1249. 1 M. 37. 1 W. 314
1743. 235 -

At C. L. - Assumpsit would not lie for rent the
debt would lie. 20. Hutt. 34 - Doug 234 Hob. 254 1 R. 5. 97
1 Kish. Cro. 576. 414 C. L. 242 - 3 Lec 150 & Wood. 152 Bull 157 -
Peck 241 - 3 Green 234 - 1 Com. L. 559. Debt lies wherever
as the higher remedy - see also the principle

In C. such
a lease does not create a tenancy at will - it is a mere
license - but Assumpsit lies on a question of fact
4 Day 228 - Poterpin must not be recovered in this case.
Exp 20. 172 278

117

Within one year

Contracts not to be performed
within one year from the making - or a promise to pay or
do an act two years hence

Under that this clause does not
extend to any agreements concerning lands or tenements
Rev. 248 - Nov. 1877 Sec 8 92 32.

Because I suppose the
preceding clause has made all the provisions intended
to be made as to contracts of that kind - Suppose then a
bond or contract of that kind is signed or partly performed -
it is binding I conclude - for they are in general of no
effect whenever to be performed - 1 Co. 89.

Where the
performance is to take place on a contingent event
which may or may not happen within a year
that contract is not within the Stat. Ex - On the
return of a ship - Rev. 280. Rev. 186. Sec 11 280. Stat. 500
Nov. 1278. 2 Rev. 216. 17. 2 Jul 9. North 330. Rev. 214
To be pay on a contingency - This - 353 - 2 Rev. 210 & 6. 18.
To a promise to leave a sum of money to be promised by
will. Rev. 280. Rev. 1278 -

To make the contract binding
there is no need of the contingency - happening within a
year for the contract is good or not ab initio - 2 2 31
Rev. 1281 -

This clause then extends to contracts only
which according to their express terms are not to be

performed within a year 1 Burr-1281- Peab. & 214

And even as

to there it seems where the promise is made upon a
containing & accruing consideration it is good & the
bond & to be performed within a year from the time
when the consideration is complete - In Peab. promise
to pay for boarding one child for two years not so good
1 Burr 80 - See you -

Rules applying to all or several of the contracts contemplated by the Statute

The construction of the Statute is the same in Chancery as
at law - the remedy or relief may be different 8 R 600
3 R 430 - 1 Decr 22

Intention of the Legislature governs both
& the construction is merely the means of discovering that intent
Paw 372

"Agreement note or memorandum in writing" where
Any writing I suppose which is intended to furnish
evidence of the contract is an agreement or note or
"memorandum" within the Statute As a letter written
by one party is a "note" 1 Penn 179, 1 Paw 227, Rob 105 -
2 Br Ch 32 - 3 R 218 - 2 Atk 503 - 14 S, 201 20922 -

A letter written
by one's own agent stating the terms of an agreement
made - is sufficient 3 Atk 503 - Rob 121 But it
must distinctly furnish the terms of the agreement
See not binding 1 Penn 179, Br Ch 360 - 14 S 426 -

A promise raised by implication of law is not within
the H. 1 Nov 180

To bring a case within this clause of the H there must be a
specific express agreement not to be performed within any year
10 Johns 244 7 Cowen 264 10 Mees 428

Under the 2^d Section of H. Ch. 3rd there must be some clear evidence of
ownership to constitute an exception. Def^t employed Off. to
make him a messenger & before completed employed as Clerk
permanently to put down new work & to tell upon it. Held not
to be an exception. 25. C. L. 48²²², 2 B. & C. 44. 511.
vid 1 East 192. Bac. Arguent. C. 11 C. L. 390

If the memorandum do not specify the price with the law
presume a reasonable price was intended paid it close where
the contract is executed 1 Howard 121 112. q. ex. 14 Sunday
only 25 C. L. 173. 211

From order several articles he is bound to receive none until
all are done but if he does he must pay for them rec^d
15 Mond 224. 1 Camp 58. 6 L. S. Moore 114 y B & C 386
for by receiving a part he abandons the entirety of the
contract. Antea 1127

Who an authority to convey lands must be Lt
be in writing & yet an authority to contract for
a conveyance may be by part. 5 Hill 112 24 Mond
235 Story on Agency 237. 237

12th 12 1 Pau 290- Rob 100- See 2 Eq Ca-17.

But the terms

may be made certain by reference to other documents
on extrinsic facts 1 Br Ca 318 Rob 107. 1 Ves Jr 230. 2 Bos-
238- Ex An agreement to convey for the same price
2 S. case-

It must appear that the other party accepted
the terms & acted upon the offer 1 Cow 179. 2 P.W. 65-
1 Pau-287. 9 Mod 3- See there is no agreement-
5 Vin-527- Rob-107-92-

When the writing refers to
something extrinsic by which it is to be made certain
if the subject is not made sufficiently certain by the
thing referred to itself no parol proof is admitted to
make it more so Rob 108- Ves Jr 236- Ex- Reference to
a deed which does not contain the subject or terms-

An agreement must
written or printed by one of the parties & containing
the terms is a sufficient note 4 Mils 14- 3 P. 599. See 191
And the consideration as well as promise must be in
writing- the agreement be inquired to be in writing
by the Stat-5 East 10 Rob 116. 207 6 East 307.

Recourse to contracts
for the sale of goods under the Eng- Stat "note" or
"memorandum" only is mentioned 6 East 17 "agreement"
is not

An instrument intended as a deed but failing
to operate as such from the omission of some

require or by a change in the relative situation of the parties, may be considered in Equity as an agreement or evidence of an agreement - Ex - Bond to one intended wife to marry, bond to her 2 P.W. 243. Rol 109 Being as a debt then in present it is as a bond avoided by the marriage -

An agreement imports the priority & benefit of both parties - hence a man acting in a steward's look is no evidence of an agreement between landlord & tenant 1 Atk. 407. Rol 109 -

Signing - What?

Not only a subscription in usual form but the name of the party to be bound written in any part of the instrument is intended to give authenticity to it is a sufficient signing 1 Wils. 118. 2 Eq. Ca. 52 - 1 Ves. C. 3 Atk. 503 - 1 Bosw. 283. 93 - 1 Fowl 167. Ex 2. D.B. agree with C.D. to sell him 3 acres - not subscribed - it is sufficient Ex 28 Hia 899. D. 2. 576 Rol. 120 - 3 Lev 36. 9 Geo 7. 119. 2 Bos. 238 - 12 Lj. 2190 Secus where the name written in the body of the instrument is not intended to give authenticity to it. Ex - A having agreed to lease by hand wrote instructions for drawing the lease in these words "The lease to be received & to pay taxes" &c - no signing by C. - the name of A was inserted merely to explain the stipulations not to authenticate the instrument 1 Fowl 166 - 1 P.W. 1, 1 Bosw. 283 - Rol 121 -

not 1 Person 2 Hrs. A memorandum for the sale of land to be valid within the St. must
106t 142 not only be signed by the party for but must contain all the essential
requisites of a contract that they may be understood from the writing
itself or some paper to which it refers without the necessity of referring
to parol proof 12 Vas 1166 as the price to be given 1 Att 12. 1 Chy 114 22
Pars. Chy 560 11 East 1112 3 Bro 318 3 Solms 1119 Pars. Chy 374
Gillb E. C 35 2 Kern 415 1 Vas 279 1 Solms Chy 280 - 1 Vas 326

If an agreement cannot rest partly in writing & partly in parol
1 Bro. 92 every thing before resting in parol by the writing becomes
extinguished & void. 1 Solms Chy 282 2 Barlow R 135 1 Solms R 4114
If whose part performance is set up to take a case out of the
St. the party cannot resort to parol evidence to aid the
written memorandum 1 Solms Chy 273.

The authority of an agent to sign may be confirmed orally.
25 C.S. 171.

1148

It seems to have been formerly supposed that alterations made by one party with his own hand in the draught of the agreement was a sufficient signing - 1 Ker 220 But this opinion is overruled 10th 116 - 14th 116 - 18th 284 -

But the signature of one as a subscribing witness (the knowing the contents) is a sufficient signing to bind him to any stipulation recited in the writing on his part - Ex - Where marriage articles recited that the mother of one of the parties had agreed to advance £1000 as a portion & were subscribed by her as a witness she was held to be bound tho not in former party - for the signing was intended to give authenticity - 1 Ker 6 - 1 Wils. 318 1 Paw. 284 - The subscribing witness may be considered in such case as having adopted the agreement Rob. 123 -

Who must sign

Sufficient if the party against whom it has signed if there is evidence of the concurrence of the other - Ex - A draws an agreement & procures B to sign tho he himself does not - B is bound - 1 Br. Ch. 584 - 9 Ves. 2 351 - 2 Ch. Ca. 164 1 Paw. 280 - 2 Ver. 373 - 140. Ea. 20 - 2 32 - 1 Ves. 2 265 - Rob. 115 - 124 - 17. - 14th Mead 1165.

In the last case it is said A is also bound for procuring B to sign - made B's subscription authorized by A - & a signing by the

The must sign

Movement of one party is equivalent to a signing
by his agent - 1 Bos 287. 1 Eq. Ca. 21. 2 Ch. Ca. 164 - gr -

So if
the party not signing bring a bill for specific per-
formance he is bound & emb. for he thus recognizing
2 virtually affirms the agreement as to himself
14s 32. 3 Ch. 124

So auctioneer's subscribing the highest bidder's
name to the condition of sale is said to be a sufficient
signing for both parties - In thus subscribing he is
said to act as agent for both 2 Burr 280 3 B. 599 2 Burr 1921
= 8 B. 151. and 2 that this is not an agreement in writing
- that was a sale at auction of the after moeth of land -
The rule is holden to apply only to the sale of goods. 1 Eq. 210
1 Bos 206. 1 Ves. Jr. 244. 2u. 9 Ves. Jr. 249. Rob 115 Peck. E 217.

It has
been doubted whether sales at public auction are
uncontemplated by the Stat. at all - the transcription being
public & so no danger of perjury (2 Burr 280 3 B. 600 - 2 Burr 1921)
but it does not appear by any direct authority or any
reasonable rule of construction that such sales stand upon
a footing different from others

A printed name may be a
sufficient signature. Et a tender bill of parcels with
his name printed (2 Bos 238 - Rob 124) for the name is
printed by his procurement & delivered as his signature -

It is not necessary that the
authority of an agent signing for his principal

Selman Church: Died July. 9. 1849. between
7 & 8 o'clock. P.m. A.C. 55.

1846

A held a lease of B. Acre. he sold his interest to
C. wrote his name upon the back of the lease &
affixed his seal & delivered it to D. directing him
to write an assignment over his name & deliver it to
C. which was done. Held to be void. within Statute
27th Geo. 3. 132. Jackson H. Petros—

A held a lease of B. Acre. he sold his interest
to C. wrote his name upon the back of the
lease & affixed his seal & delivered it to D.
(uncolored)

1. *De la nature de l'homme*
2. *De la formation de l'homme*
3. *De la vie de l'homme*
4. *De la mort de l'homme*
5. *De la résurrection de l'homme*
6. *De la vie éternelle de l'homme*
7. *De la gloire de l'homme*
8. *De la félicité de l'homme*
9. *De la béatitude de l'homme*
10. *De la sainteté de l'homme*

should be in writing - The Stat. requires only that the agreement be in writing signed &c - Vol 45- 3 Wood = 127. 9 Vesp. 251

Not necessary that the identical contract stated should be signed - sufficient if it is acknowledged by a writing that it is signed (Neb. 121- 32 Ch 318 1 Qth - 503) Ex - Letter to one's own agent stating the terms of an agreement as ready made -

The bare writing of an agreement with one's own hand does not dispense with the necessity of signing - P. H. 770 - Vol 121

Necessary Consideration

A contract is an agreement upon a sufficient consideration to do or not to do a particular thing - 2 Bl. 442 L 1099

According to this definition a consideration is of the essence of every contract - the material cause of a contract - that in consideration or on account of which each party is induced to give his assent 1 Bow 330 - 2 Bl 143 -

Of two kinds - good & valuable - P. D Good consideration is that of kindred or natural affection between near relations. 2 Bl 297. L 144 3 Co 83 - 1 Bow 361 1 Ker 1127 - 1 Dowd 337.

Such a consideration in contracts executed is sufficient as between the parties Ex - Grant by deed from father to son - But as against

Necessary consideration

creditors & bona fide purchasers generally, claimed
from ancient & old deeds - 2 Bl 297 -

And an executory con-
tract on such consideration may be enforced in Chan-
cery in many cases 10 A 361 - 1 W 427. 2 B W 176 -

2. Valuable - This consists in something valuable as
money, marriage &c - 2 Bl 297. 3 Co 33 - Burr 482 -

These
may be made in either of four ways - 1. By stipulating
thus "Do ut des" - i.e. loan on bond or promise &c. in
contract expressed or implied to pay &c -

2. "Fecit ut
des" - i.e. where labor or service is to be performed
on both sides or forbearance on one side & some act
on the other - or mutual forbearance. "

3. "Fecit ut des" as
an act to be performed for reward - 4. "Do ut facias" the
counterpart of the latter or the latter inserted as
giving or agreeing to give something for an act to be
done 2 Bl 444 - 13 B 355

Contracts under the present
view are divided into two kinds - 1. Specific - 2. Simple
7th 287 -

A Specific contract is one which is entered into
by deed or writing sealed 2 Bl 465 - 295 Co L 171

A simple
contract by the Eng. law is a contract by parol or

A limit of Eff- will never decrease performance where the
contract is ~~not~~ not neutral 1 Solm Ch 282 Bumb III
1 No 86 1 Schradef 13. 2 Kern 415 - I 1268

In regard to Chilled intestals are ~~exposed~~ under seal infants as
consideration at Law 1 Kern 427 3 P. Ch 222 6 No 622. 1 Solm Ch 236

1871
The first of the year was a very
cold one, and the weather was
very disagreeable.

The second of the year was a
very warm one, and the weather
was very pleasant.

Necessary consideration

one written but not sealed - A contract in writing not sealed & express contract one upon the same footing in point of solemnity (7 W 351 m 23/46 - Rob 99) In strictness indeed writing not sealed is more evidence of a parol contract.

In the written instruments containing express promises or covenants, whether sealed or not are treated as specialties - See below. Hence therefore simple contracts are always verbal & the Eng-law relating to specialties applies here to written contracts not sealed as well as sealed if they contain an express promise or covenant
1 Lev 378 & Sedg. 2 Day 27

It is clear that an executory contract by parol is not binding without consideration (1 Pau 330 23/45 Lat 129 - Plowd 309.62 - Dy 30 - 336 - D. Eng 909. 5 W 113 - 1 Homb - 326 - 332) it is nudum pactum - & ex nudo pacto non oritur actio - & a promise to give one £100 - & without reward -

But by Willes J. a contract in writing is good at C. L. without writing consideration (3 Barn 160 312 - 1246) This proposition is too broad -
1 Pau 333 - 42 - 8 - 242

Case put by J. (251 248) of a promissory note - But as between the original parties, actual consideration is necessary & at C. L. must be proved 1 Pau 341 - Ch 57 7 W 351 m - Darg 514 - 7 W 121 - 8 - 421 - 757. Rep 185 - 1 Homb - 335 - 211110d. 242 - Stra 674 Bull 274 Rob 7. C 99 -

1. If these negotiable note is negotiable promisor cannot
 incur in general even the want of consideration because
 within person become the holder & the law merchant
 governs 1 Paw 341 - 2 M 71 1 Foul 385 - Same as found
 in the third person -

But at C.L. merely reducing the
 contract to writing does not supersede the necessity
 of consideration - & I conceive that in strictness &
 in judgment of law a consideration is necessary to
 the validity of a contract sealed instrument or
 specialty - Who is. Pff. need not prove consideration
 & 2 Def. cannot at law even the want of it for
 from the solemnity of the instrument a consideration
 is implied (1 Ves 574 - 1 Paw 232 - Cloud - 208 Burn
 1637. 1 Foul - 334 2 B 1 440 - Wend 200) & consideration
 being implied if Def. might disprove it he might
 contradict his deed which cannot be 1 Paw - 240 2 B 1 295 -
 Cloud 434 - 12 B 1. 344 - D Ray - 729. 1550 -

Suppose that the
 want of consideration appear upon the face of the specialty
 & it void? so considered - Same - 2 M 577 - see Burn 2072
 1639. 7 M 417. 3 B 238 - 1 Paw - 268 - 7 Co 40 - 2 Ck 152 -

Result that on principle a
 consideration is necessary to the validity of a specialty
 - but that it is binding unless the want of consideration
 appears in the instrument or in some other instrument
 of equal solemnity which is part of the contract
 Rob. J.C. 95 - 1 Paw 341 that on voluntary covenants



The consideration of a promise within the St. as well as
the promise must be in writing 5 East 10 3rd ed 210 8 do
29 11 do 221 13 do 175. 10 Mand 250 / Contra 6 Ct 81 17 Mass
But a consideration implied from the terms of the instrument is
as effectual as one expressly set forth - 19 C. L. 55. 272
7 do 414 1 Pet. 501 6 C. L. 531 7 do 338. Ex. 11/ agree to
become surety for R. now your ser. "the consideration
arising in debt" was the continuance of the ser. in
off. employ & between suff. 16 C. L. 335 20 do 272. 55
10 Mand 252

Necessary consideration

1839

under real only nominal damages are recoverable at law - This supports the contract obligatory - But is the want of consideration supposed to appear in the instrument? What is the meaning? 3 P.W. 222 - Ves - 514 - 2 P.W. 248 - Rol 660 - 6 M. & L. 12 - 1 L. & C. 10 - D. & C. 475 - As to relief on ~~bonds~~ voluntary bonds in Equity the rule

that a consideration is necessary to every contract applies in its full extent to executory contracts only - A contract executed by delivery of the subject is good without consideration as between the parties except (1 Ba 238 Doug 21 - L. & C. 571 - 1 Str 955 -) for the contract being executed by the parties the law will not rescind it tho it would not enforce the agreement if executory

Noted

in L. & C. that the consideration - proposed in a deed of land is conclusive evidence - between the parties of the existence of the consideration - presumptive only as to the amount & receipt of it - 7 Co 40 1 East 497

A consideration

may arise it is said only in two ways - from something advantageous to the party promising or undertaking - & from something disadvantageous to the party in whose favor &c - 1 Pau 342 - 1 Fort. 386 1 Com 149 - Rule too narrow - D. Mansfield - bawp 290.4

I. From something advantageous to promisor So. Ex. In consideration of my selling my horse to D. S. to day he

1170
Necessary consideration

promises to pay him after - here the consideration is something distant & goes to him

The quantity of consideration is immaterial - the law does not in this instance regard proportions - sufficient of there is any value
- Ex. A's pepper corn. 2 Ex 213 - 2 Wms 152 Hob 280
2 Ex 513 -

Small or insignificant considerations are not considerations in law Pau 355 - Ex 11 - Rob 23 -
Cro E. 206 -

But any thing however trifling to be done by him in whose favor the agreement is made is a sufficient consideration - Ex. A leases to B - & B agrees to C - rent becomes due & C promises to pay it if A will show him the lease - Showing the lease gives A an action on the promise. 1 Pau 355. 343 Ex 66
Ex L 76 Dy 272

The mere relation of landlord & tenant is a sufficient consideration for a promise by the latter - Ex. Declaration stating Debt to be tenant &c & that in consideration thereof he promised to carry away from the farm straw &c - held an assumpsit. 3 Wms 578

II. From something distant & goes to him in whose favor he Ex. A - having a bond against B - delivers it up to be cancelled on B's promise to pay the contents
1 Pau 344. 8 Hob 45 - Ex 342 Ex L 4 349 - 881 Hob 216
1201 22 Ex 125

In an action on a note given for wood sold was allowed
to prove that when the note was given off agreed by joint
to indemnify against all damage the wood should sustain
in a given time & that such damage had been sustained
allowed as a reimbursement or satisfaction of the note to the
amount of such damage & that this testimony did not
vary or alter the note 3 Hill 177-

"Ignorantly the collection of this note" is void for
want of consideration within N.Y. St. if it had been a
guarantee of the payment of the note it would have been
good. 3 Hill 584, 5 do 146

Necessary consideration

1871

As a consequence of the general rule as to the ~~modern~~
two modes in which considerations may arise it is
also a general rule that a contract is not supported
by consideration altogether past & executed - Ex. In
consideration that one has bailed my servant &c.
I promise to pay - this is not binding - there is no
subsisting consideration no benefit or disadvantage
to either in consequence of the promise - 1 Bos 348
D. 22 - 8 Cow 5 - 202 - Ex. E 885 - 442 - 1 Roll 11. 2 Sub. t.
78 Ex. 87. 95 -

But the part of the consideration past
& executed yet if a part is subsisting the contract
may be good - Ex. I for in consideration that Cope
has occupied & paid the rent promised to some
the latter himself in future - this is good - for tho
the occupation & rent paid were past yet the Cope
continued in possession & was to pay rent in future
1 Bos 349 - 2 Sub. 78 - Ex. E 94 Ex. E 409 & 3 C 196

The
general rule in common law & the rule that a past consid-
eration will not support a contract is now somewhat
relaxed. 5 Tan 938 Burr. 1671. Hull 54 2 Leon 111

Thus a
contract on consideration executed is good if there was a
previous legal duty or promise. Ex. If one in consideration
of a previous indebtedness promises to pay it is good - here
however the duty continues - Ex. when Doff. promised in
consideration of having buried his child by 40 Ely it is the duty

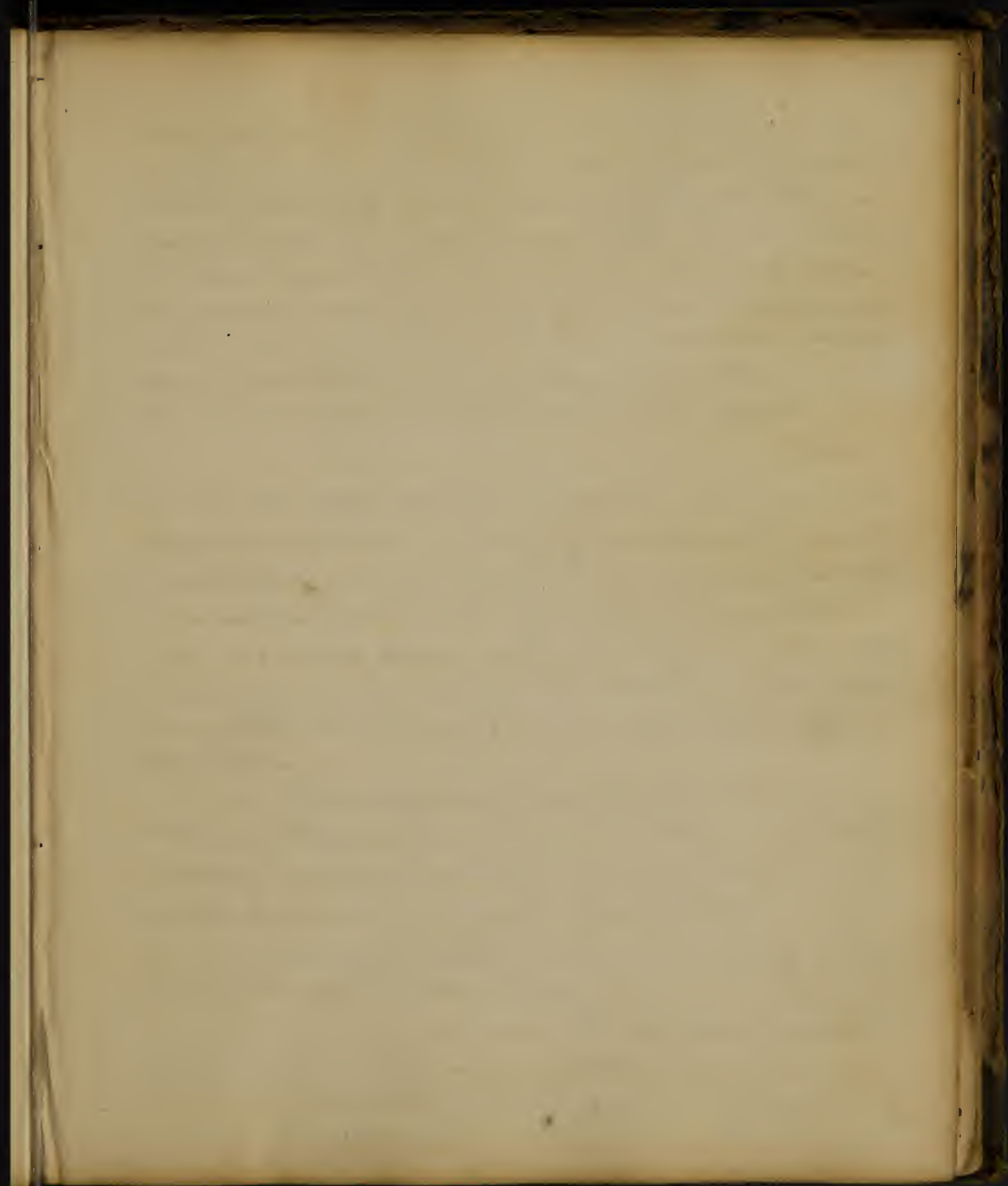
off parents to buy their children 1 Dou 350- 1 Mol 1183 1 Leon 198
 12 May 260 Cro - 138 Jan 1891

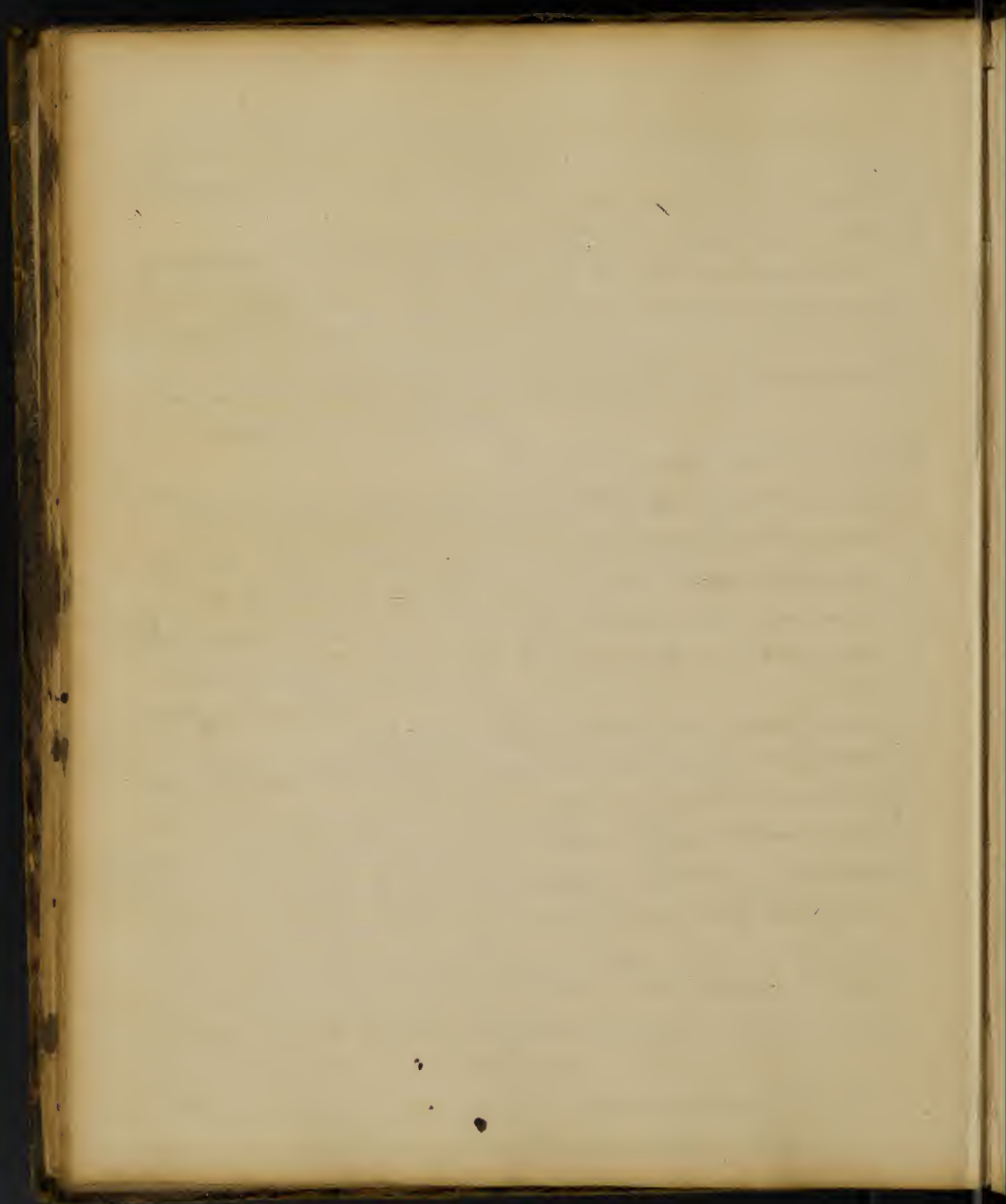
So if there was a prior moral obligation on promisor this is a sufficient consideration - Ex
 Promise to pay a just debt barred by the Stat. Limitations -
 (2 Dou - 336 1 May 259 2 Bl 445 1 Dou 351. Coups 295 - 2 Ld 95. Bull 74)
 So the promise of a putative father to pay for the best nursing
 of his natural child - tho the law will not in such case raise
 an implied promise (2 Ld 506

So a consideration past will support
 a contract if the consideration accrued at the request of promisor
 - for the contract the subsequent couples itself with the previous
 request - Ex. Promise to pay in consideration that I should at
 this request beated my servant 1 Dou 351 about 268 3 Ld 96.
 1 Bult 120 Dy 272 - 1 Mol - 105 - Co L 409, Co L 18. Co L 42. 282
 2 Ld 95 - 1 Dou 356 -

It has been holden that a mere stranger to a
 mercetorious act done by another cannot support a contract
 founded on a contract in his own favor - for he does nothing
 advantageous to promisor or disadvantageous to himself -
 He is a stranger to the consideration - Ex. in consideration
 that B will request him of a trespasser promisor B. to pay C -
 £100 - C it is said cannot sue upon the promise - 1 Dou 340 -
 355 - 12 330 - 2659. Co L 220 Co L 687. 2 Mol 441 - 597. 1 Vent 6 -
 3ed - ind 1 Dou 101 8 Ld 117. Coups 443 - 2 Ld 24 - 3 Ld 35 - 5 Dou
 200 - 186 1 Ld 15 - Burr 2680 Bull 35 -

This rule seems more to be
 confined to deeds inter partes. 3 Dou 118 n 3 Ld 130 Co L 17 -





Nov 29. Feb 23 1825

But in the case of past agreements
it seems settled by the latter decisions, that the third person
may maintain the action (3 Bos. 148 n. 1 D. 101. 1 John. 1210. 2 Evans
Both. 132. Sty. 290 Com. 219. 8 Macc. 117) He is to be considered
secondhand as adopting & ratifying the contract by his subsequent
agent - In such case the promise should be laid as having
been made to the Off & proof of a promise to another for his
benefit will support the declaration - Semb. 1 Bos 101

It has

always been agreed that a consideration from one will
support a contract in favor of another who is nearly
related to him - Ex. Promise to A in consideration that
he would perform a duty to pay to his daughter -
(1 Barr. 353. 1 Vent 318. 32. 2 Lec 210. Ray. 302.) But it is
appears from the foregoing rules that no such relation
is necessary, & that the promise is good in favor of a
stranger -

When forbearance of a suit is the consideration
there are two requisites - 1. It must be either general, that is
perpetual or for a certain period - 2. It must be of an action
in which promisor or person claimed to be liable is chargeable
or in which there is at least a colourable liability on his
part - 1 Barr 353 - 6 E 208 Exp. 95

Therefore if a promise to
pay a debt in consideration that Off. would abstain from
suing - no time being limited & forbearance not being
expressed to be perpetual - is not good - 1 Barr 353 6 E 19, 455 -

But promise to forebear a year is a reasonable time
is a good consideration - court to judge what is
a reasonable time. Esp 95 - Mutt 108 -

2. Promissely
another to pay a debt due from her son who was
dead if off - would forebear to sue her is not obligatory
- there is no consideration - she was not liable - fore-
bearance is no favor to her - no disadvantage to
promisee - 1 Bar 354 - Maud 273 - 2 Sel 96 12 - there is
no moral obligation on her to pay -

So if one is arrested
on word of a p. & another in consideration of his
release promise to pay, he is not bound - there is no
consideration - (1 Bar 355 - Esp 94 Maud 73) the release
is only from the imprisonment

So promise to pay
pay 13^d debt if creditor will accept of A as his paymaster
& will forebear to sue A for it for six months is not
good for he might sue B immediately - therefore
no prejudice to the creditor 1 Bar 346 Maud 92 -

So if one
promise in consideration of her leaving a suit is good if there
is a reasonable ground for the suit - En. & 12th Henry
bought silk & velvet died - his executrix in consideration
of forebearance promise to pay - this is good at C. L. for
here was color for a suit she being executrix. Bar 356
Latch 142 - Dy 22 -

When a promise is in consideration of

175
1771



under the original
O
show

[Faint, illegible handwriting]

[Faint, illegible handwriting]

[Faint, illegible handwriting]

[Faint, illegible handwriting]

But promissio
is a good

Vendor of personal property in person cannot set up want
of title in his vendor until a legal eviction or recovery
against him by the lawful owner 19th Nov 77 10 Mead 385
but such recovery is a good defence to an action for the
consideration or if it has been paid the vendor it binds
10 Mead 385

for breach of a suit against the promisee the original
cause of action is not till enquired into - it is acknowledged
by the promisee 1 Pau 357. But the rule cannot hold
2 trust if it should appear in the declaration that the
suit for breach was grounded 1 Pau 356

Contracts viewed
with reference to their consideration may be divided
into three kinds, Doug 605-

1. Where that which is
stipulated on one side is in consideration of performance
of what is stipulated on the other - Here the consideration
is termed mutual - Ex 2 agree to pay 2s for
doing a certain act - Here the doing the act is a
unaction precedent to his right to the payment - 1 Pau -
357. Went 137. 214 - 2 Lut 95 - Hob 106 - 1 K. 240. n -
12 Mod 460 - 1 Term 380 - 1 L. 131. 274 - arg. & Co 10 -

If he sue for
the price he must aver performance & R 210 - or what is
equivalent to it tender or that he was prevented by
Dofta (1 L. 638 - 2 L. 686 - Doug 259. 1226 - 5 Carr 50
1201 455) or as the case may be that he was at
the place ready to perform & Dofta absent & that he was
then prevented from performing, 1 Port 203. 5 - 419 - R 125
Stran 488 - 2 K. 240 -

2. Where performance on both
sides is to be concurrent - here neither can compel the
other to perform till he has performed his part or
offered to - or is at the place appointed & the other is absent

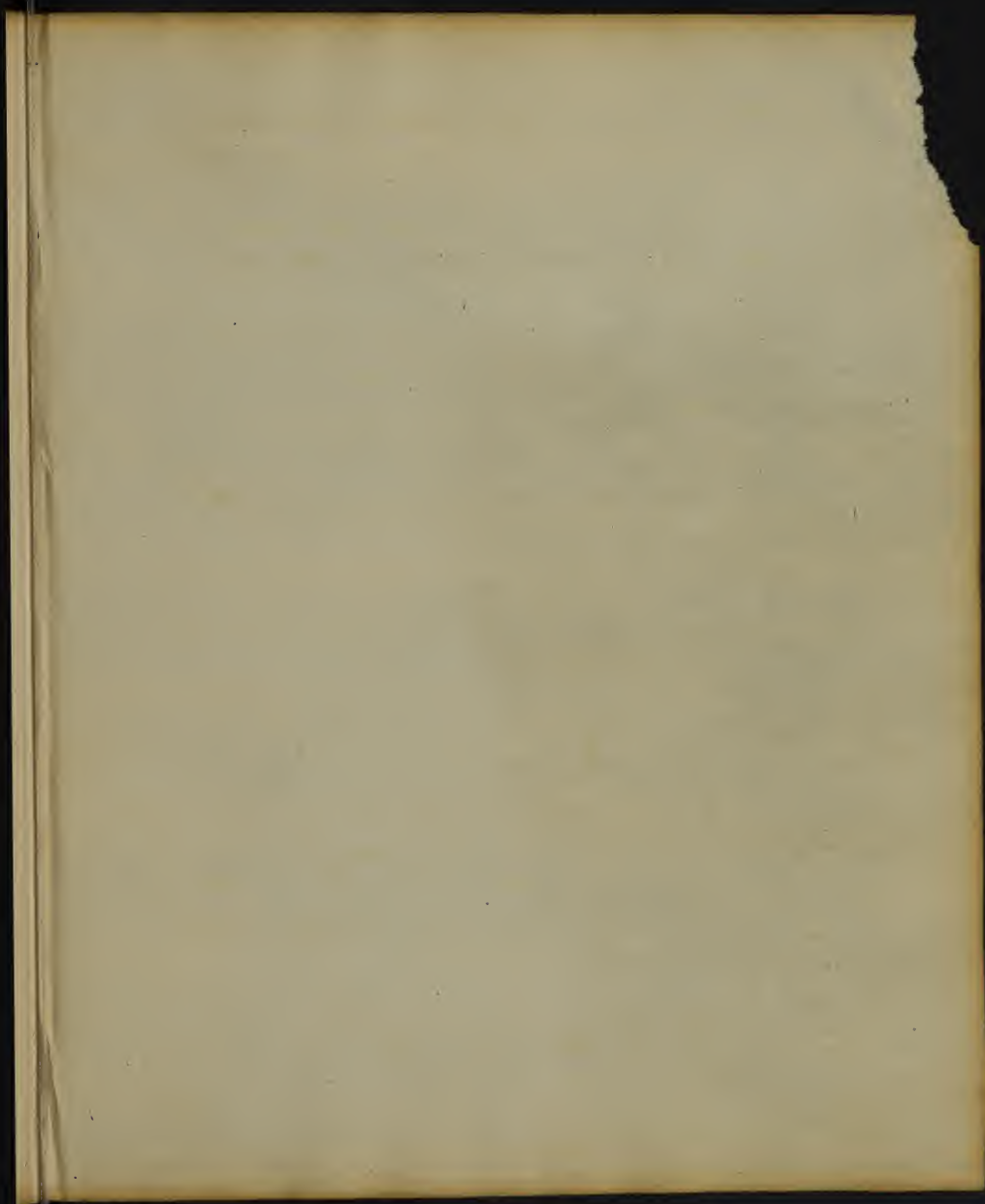
or is ready to demand performance & the other
refuses - *Ex* - A promises to deliver 2 - a load of wheat
on such a day for such a price - 2 *N.R.* 240 - 1 *Lancd* 32
5 *Com* - 57 - 1 *East* 203 - 619-29 - 7 *N.R.* 125 - *Sol* 171-12
Dang 659-88 - 4 *N.R.* 61 1 *N.R.* 31 3 *BB* - 8 *BB* 362 *Str* 575 -

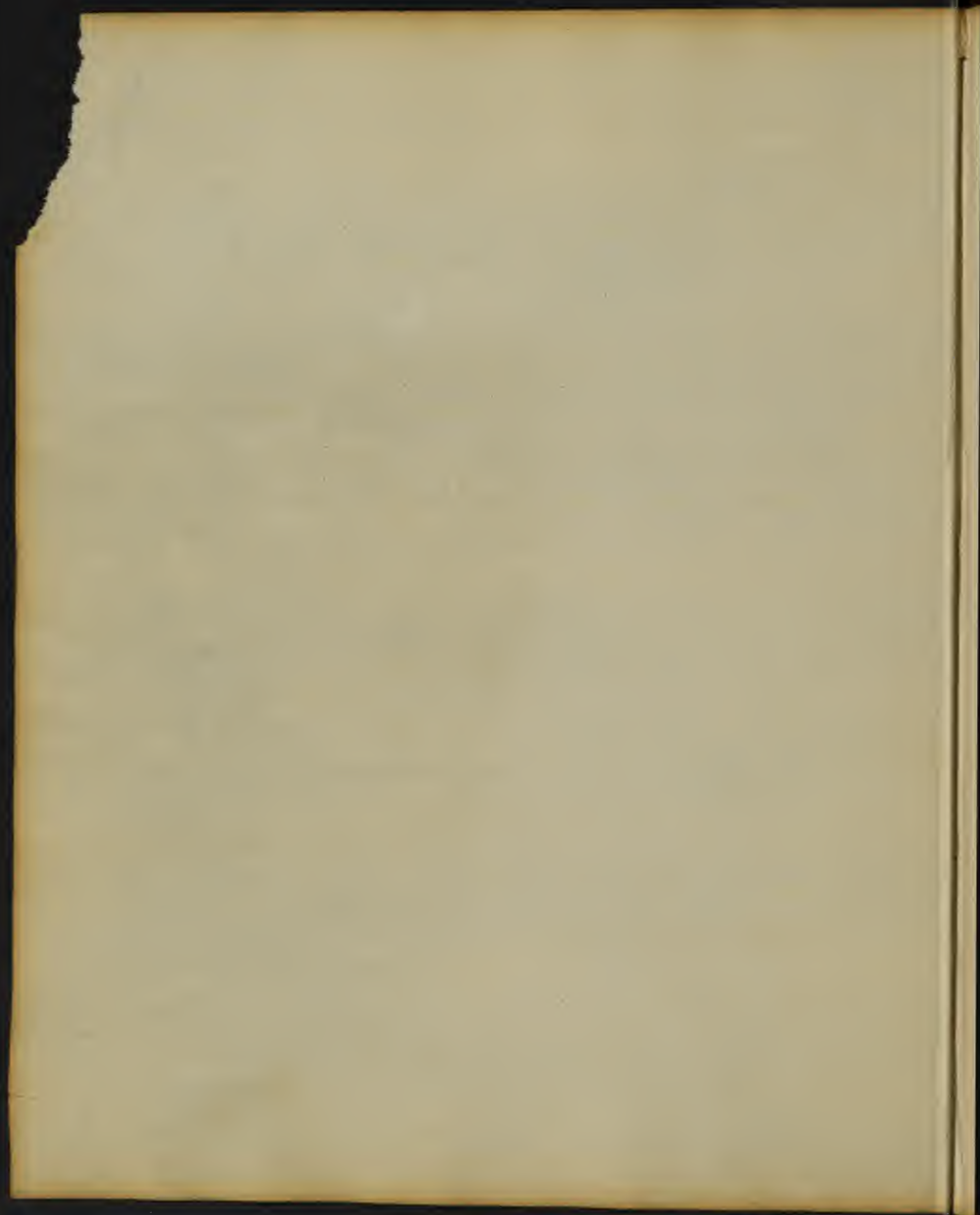
When a day is appointed for performance it is sufficient that *Def*
was there & defendant already no tender is necessary - 1 *East*
203 - 7 *N.R.* 125 - *Thur* 453 - *R.L.* 108-128-53 *Sol* 113 - Dang 688
4 *N.R.* 61 - *Q* in this case *Def* was to perform on request
it is sufficient that *Def* was ready & requested & *Def*
refused - 1 *East* 203

If the agreement is that one shall deliver
act for the doing of which the other shall pay, the doing is
a condition precedent - *Not* *re* *pre* -

But if according to the terms
of the contract the money is to be paid on a day which is to
arrive or may arrive before the act can be performed
the doing of the act is not a condition precedent (*Lancd* 320
2 *N.R.* 240 - 1) Here action lies for the money before the act
is done - 1 *Lancd* 320 - 1 *Ham* 6 - 581 - 8 *Mod* 62 - 2 *Vin* 31 - 2 *Q* 612 -
1 *Pow* 358 - *Sol* 131 - 7 *Co* 150 - 18 *Cent* 117 - 2 *M* 31 389 - 3 *N.R.* 512
2 *N.R.* 135 - Here indeed the payment is a condition precedent
Sol where a day is fixed for payment & no time for
performance on the other side - 1 *Lancd* 320 - 2 *N.R.* 233 -

But if the
day appointed for payment is to arrive after the time





117/8
fixed for doing the act performed & the act is a condition
precedent - must be done in connection for the money
100w 388 - 121 171-375-2076-1 Mol 114-120 320-2 S.R. 246
12 Mol 402-2 Roy 665-

B. But where the promises are mutual
(or independent) that is - where the promise on each
side is the consideration of the act on the other performance
is not a condition precedent on either side - either may
sue without averring performance 100w 329- Doug 615
181w 151-214- 1 Mol 83- 120 293- 3 Bul 187- 120 102
121 24- 5 1100 411- Sues in Equity - where the Off must
aver performance or readiness to perform tho the contracts
are mutual otherwise Equity will not interfere
(121 183- 121 184- 121 446- 2 2 Green 84-) its
interposition being discretionary

if the agreement is
in this form "I promise to pay \$100 in 6 months you
transferring stock to me" the promises are not mutual
& neither can compel performance till he has
performed - 22 2 concen 121 112- 121 633- 121 382
12 121 503- 121 271- 4 121 761- see as to the case in
31 2 1312- 5 121 372 -

Where the covenant is given to only
part of the consideration on both sides & a breach
of it may be satisfied in damages it is independent
121 320 121 320 121 320 121 320 121 320 121 320
121 320 121 320 121 320 121 320 121 320 121 320
121 320 121 320 121 320 121 320 121 320 121 320

The question whether promises are mutual or dependent is to be determined by the meaning & intent of the parties to be collected from the spirit of the agreement & the nature of the contract - that is - from the order in which the intent requires their performance - Doug 665 - 1 R 645 - D 160 - D 570, 668
 2 R 28. Sol 171. Pound 227. 2 R 240.

Where the promises are mutual - that is - independent it is no bar to an action that the offa has not performed his part - Each may have an action against the other at the same time Doug 665 -
 2 R - 1312. 1 Forb - 282 - 3 Lev 41 - 74 16 Camp 56 -

When 2 parties

have agreed of Cotte against unreasoning covenants to be independent 4 R 761 - 8 R 571 - 10 R 486 - 1 East 619 -

Mutual

promises must both be binding or neither will be so that in the contract must be of such a nature & in such terms as will bind on both sides - & both must be made at the same time or both are null & void 1 R - 360
 Sol 24 - 2 R 38.

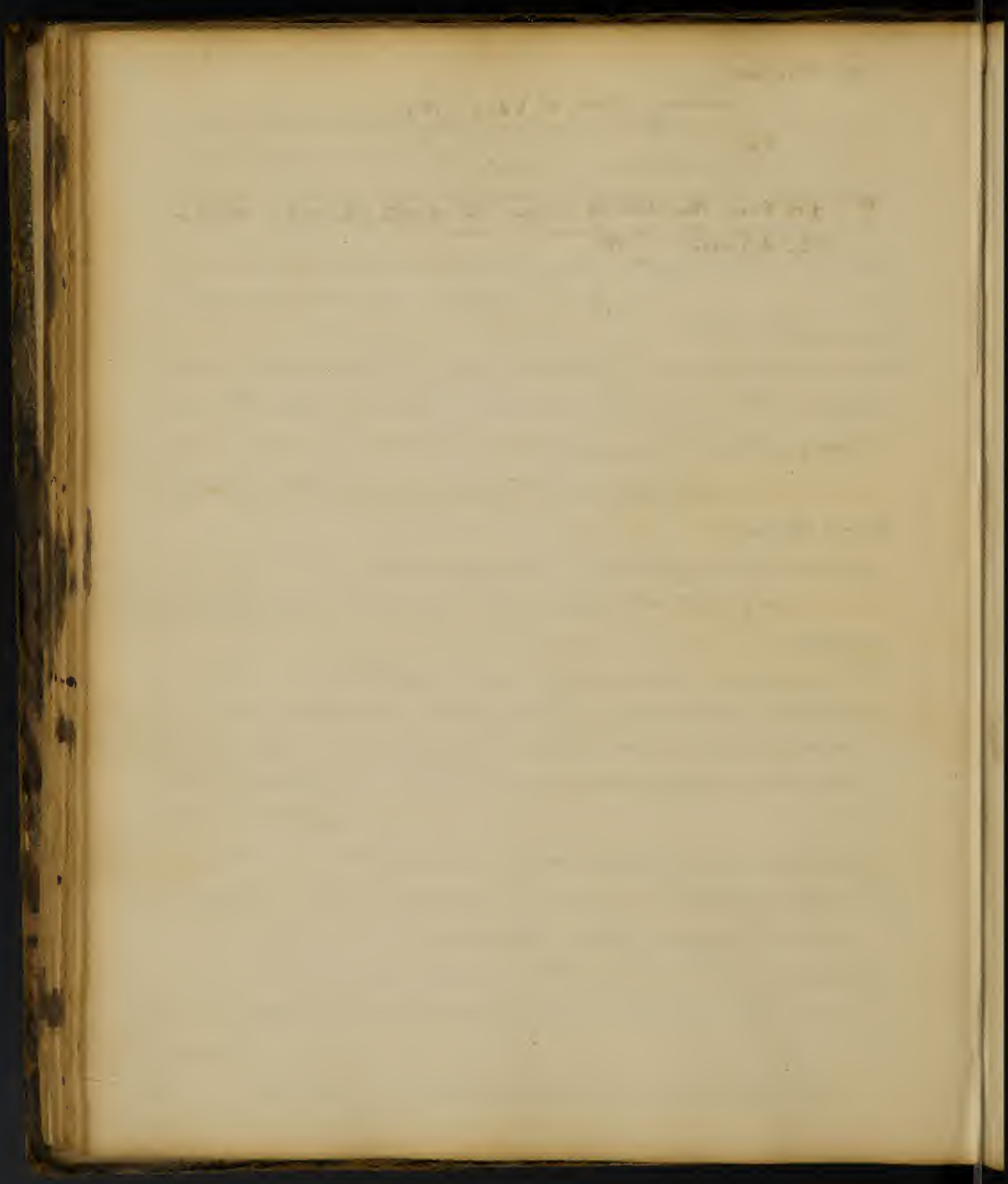
The mere act of entrusting property with another or his undertaking to do something respecting it is a sufficient consideration - 2 R 909 - 10 - 1 R 2. 661.
 5 R 143 - 1 R 364 - 1 R 185 - 1 R 26. 8 R 11. Ex Delivery of money to be delivered over to another without a reward

The preservation of the honor & peace of a

John H. Russell
Salisbury, 1847. 4 X 4. A. U. C.

X 4.

6 Col. Com. Ryn. Chi Psi. Sigma Phi. Delta Phi. Kap. Alpha.
Psi Upsilon - AC.



family has been taken a sufficient consideration in
Chancery (1 Paw 263) So the wife's interest of a tenant for
right has been held sufficient in Chancery - 10
1 Wm. 4 - 2 Vent. 353 - 2 Geo. 284 - 2 Ante

Not necessary in contracts
that the consideration be expressed in direct terms
Sufficient if one can be collected out of the whole agreement
1 Paw. 388 2 Geo. 480 An Agreement for selling boundaries

But if an express con-
sideration appears upon the face of the contract the
better opinion is that no other can be implied - 2 Freeman
Spirits de 3 Co 40 10 Paw 388 -

At L. it is said fraud in the con-
sideration of a contract (especially a contract by deed)
does not in general vitiate it - the fraud in the execution
does (2 B. 204 - 2 B. 504 - 2 Co 29 - 7; 27 2 Lev 122) - a point
waited in the second case & not in the first But Equity
will relieve against contracts per fraud in the consideration
1 Paw. 145 - 2 W. 213 - D. 290

At Law the party defrauded
must resort to his special action for the fraud - But
this rule is much relaxed by late decisions (1 Camp.
29 - 10, 11 - 8 Term - 453) Does it now hold at all in
case of simple contracts?

But authorities have held
that a total fraud in the consideration - can not -
- that is - when promisee has received is to receive
nothing is a good defence at Law - 12 Ast 55 - 305 - & therefore

that in such case relief cannot be had in Equity - seems where the fraud is partial here the relief is to be had in Equity per Counts or Law must give judgment for the whole amount of or for the debt - cannot affirm - tho the fraud is total yet if the obligation is not in suit or if all the obligations are not in suit relief may be had in Equity - seems promisee would succeed in getting relief till promisee would bring a suit at law.

Interpretation of Contracts

The object in construing contracts is to ascertain the intent of the parties 10 Am 370 & the contract however expressed cannot be carried beyond that intention 1 Am 370. Thus if a grant that unless he pays \$10 per acre B may distress for it on his B. manor - a writ of annuity will not lie for it because there is no grant of an annuity or rent (10 Am 371 - Col 146) tho it is a good rent charge for which B may distress - for the manor is charged with the distress 10 Am 371 Col 146 2206/425.

Contracts are to be carried to the full extent intended if the words can be so construed as to affect it. Ex Trust created to raise money out of an estate carries in Equity a right to sell if the same cannot be raised within the time in any other manner - 10 Am 372.

The intent when affixed is not repugnant to any rule of
law will control technical terms, 3 Johns 395. / Words of
conveyance in present with an int^t to procure a good &
entire lease - said to be an agreement for a lease. See
13 Johns 118, 424 15th 735 2d 439 - A cont^d to
let place to B on certain terms for 5 years, from 1st Apr 1807
to 1st Apr 1812 in consideration that B should pay \$250 -
on the 1st Apr in each of every year during the term
hence a present demise 5 Johns 711 - A agreed to let to C
a B. to take of a certain premises for 61 years at a certain rent
of B. in consⁿ of a lease to be granted by A for the term
agreed to be a certain rent within 14 years of A. agreed to give
the lease as soon as the act was done with this demise in
the agreement "this agreement to be considered binding till one
fully prepared could be procured" - but a lease in present
17 Oct 168 h. 2 Camp 286 - men of an estate that A.
have not to form let to B. all the - the place to be conveyed
before - when B was to take a lease of the same - but to be
already in present 10 Johns 394 but in this case there had

been a part of 14 years under the agreement of the most of the
"conditions for letting the business after mentioned settling with
the owner" - "as it was to be made on these conditions with all
the usual costs" at the foot "I agree to take lot 121 at the
rent for subject to the cots" this is to be an agreement for a
lease 12 Cent 18 and 3 Cent 65 45 Cent 21 1/2 3
John, 296 in 2

words are to be understood according to their most common
 & ordinary construction unless there are decisive
 reasons to the contrary. - 10 Rep 169. 1 Ch 2 53
 Ex. E. 6 286. 30 L. 35. 2 N. 213. - Thus if I agree for
 20 barrels of ale he is not to hold the barrels after the
 ale is spent - I saw of an agreement for a hoghead
 of wine - unless he has the hoghead ~~of~~ ^{of} - such is the
 understanding of the parties - such is the usage -
 10 Rep 3rd 4 Plowd 86.

So a lease for 12-months is for
 48 weeks only - but a lease for a twelvemonth is for
 an entire year - so understood in the practice. 10 Rep
 375. 23 L 141. 6 Co 51.

Words expressive of quantity are
 sometimes understood at the place where spoken
 or used - By Saunders 3 barrels for Raw 3 Co. L. 172
 L. 172 to be delivered at another place.

But if money
 is made payable by contract its denomination is
 to be understood according to their import where
 it is payable - In contract in London to pay £100
 in Dublin - the sum to be paid is £100 Irish money,
 10 Rep 40. 20 M 58. 690.

If the language is ambiguous
 the intention may be inferred from the ^{subject} ~~intention~~ effect &
 circumstances. 10 Rep 76

Subject 4. - Covenant for quiet enjoyment extended

not tortious on trees (Paw 1108-379-88- Cas 2 125. Co 2 212
 Sta 1400-4 R 619. Pol. 34- Co 2 25-201- 5 R 880-~~881~~
 4 Co 802 80912) for the intention inferable from
 the subject is merely to guarantee against a higher
 title.

Grant of common out of my messes all of my
 messes- grantee has common only in commonable
 places- not in grantor's garden- so grant of all the
 trees growing on my farm does not include fruit
 trees growing in any garden or orchard if there
 are other trees growing on the land (Paw 372-8

To have
 necessity, et res magis valent per an instrument making
 the effect as if it were in form & substance an instrument
 of a different species. Ex. Agreement or grant by one
 joint tenant to his companion denotes as a release-
 or covenant means to me a debtor as an agent made
 Reg 187- 41160 150- 2 Land OB- Co 2 252- 101 376-3-
 208- 142 1146

Effect- When of construing a contract according to
 the ordinary meaning of the words will render
 it ineffectual or frivolous a different sense may be put
 upon them- Ex Where words of condition are used in
 constitutions of estates- Paw 382-32 Co 215- 28/155
 Went 202- Co 2 205

Let an annuity be granted for
 institution, one's use, or for other service to be done

Letters are found only according to the strict letter of their
contract 10 Decr 180 2 Dr 370 2 Credit 206 & Mand 586 Ex.

Def^t guaranteed an amount of goods to be furnished at
12 mo^s credit & was not called on to pay until after
the expiration of the time but inasmuch as no credit was
agreed to be given at the date of the goods def^t not
liable - sh^d have been sold on a 12 mo^s credit 2
Lem. L. R 352 So "I will be answerable to the extent of \$100.
for the use of A." & this guarantee was applied to satisfy
a former indebtedness of A. - guarantor not liable for his
undertaking in future ~~business~~, 10 Lem L. R 197

1840

1. The first of the year was a very cold day, with a heavy frost, and a strong wind from the north.

2. On the 2nd, the weather was much warmer, and the wind shifted to the south.

3. On the 3rd, the weather was again cold, and the wind shifted to the west.

4. On the 4th, the weather was very warm, and the wind shifted to the east.

5. On the 5th, the weather was cold, and the wind shifted to the north.

6. On the 6th, the weather was very warm, and the wind shifted to the south.

7. On the 7th, the weather was cold, and the wind shifted to the west.

8. On the 8th, the weather was very warm, and the wind shifted to the east.

9. On the 9th, the weather was cold, and the wind shifted to the north.

10. On the 10th, the weather was very warm, and the wind shifted to the south.

11. On the 11th, the weather was cold, and the wind shifted to the west.

12. On the 12th, the weather was very warm, and the wind shifted to the east.

13. On the 13th, the weather was cold, and the wind shifted to the north.

14. On the 14th, the weather was very warm, and the wind shifted to the south.

15. On the 15th, the weather was cold, and the wind shifted to the west.

16. On the 16th, the weather was very warm, and the wind shifted to the east.

17. On the 17th, the weather was cold, and the wind shifted to the north.

18. On the 18th, the weather was very warm, and the wind shifted to the south.

19. On the 19th, the weather was cold, and the wind shifted to the west.

20. On the 20th, the weather was very warm, and the wind shifted to the east.

21. On the 21st, the weather was cold, and the wind shifted to the north.

22. On the 22nd, the weather was very warm, and the wind shifted to the south.

23. On the 23rd, the weather was cold, and the wind shifted to the west.

24. On the 24th, the weather was very warm, and the wind shifted to the east.

25. On the 25th, the weather was cold, and the wind shifted to the north.

26. On the 26th, the weather was very warm, and the wind shifted to the south.

27. On the 27th, the weather was cold, and the wind shifted to the west.

28. On the 28th, the weather was very warm, and the wind shifted to the east.

29. On the 29th, the weather was cold, and the wind shifted to the north.

30. On the 30th, the weather was very warm, and the wind shifted to the south.

31. On the 31st, the weather was cold, and the wind shifted to the west.

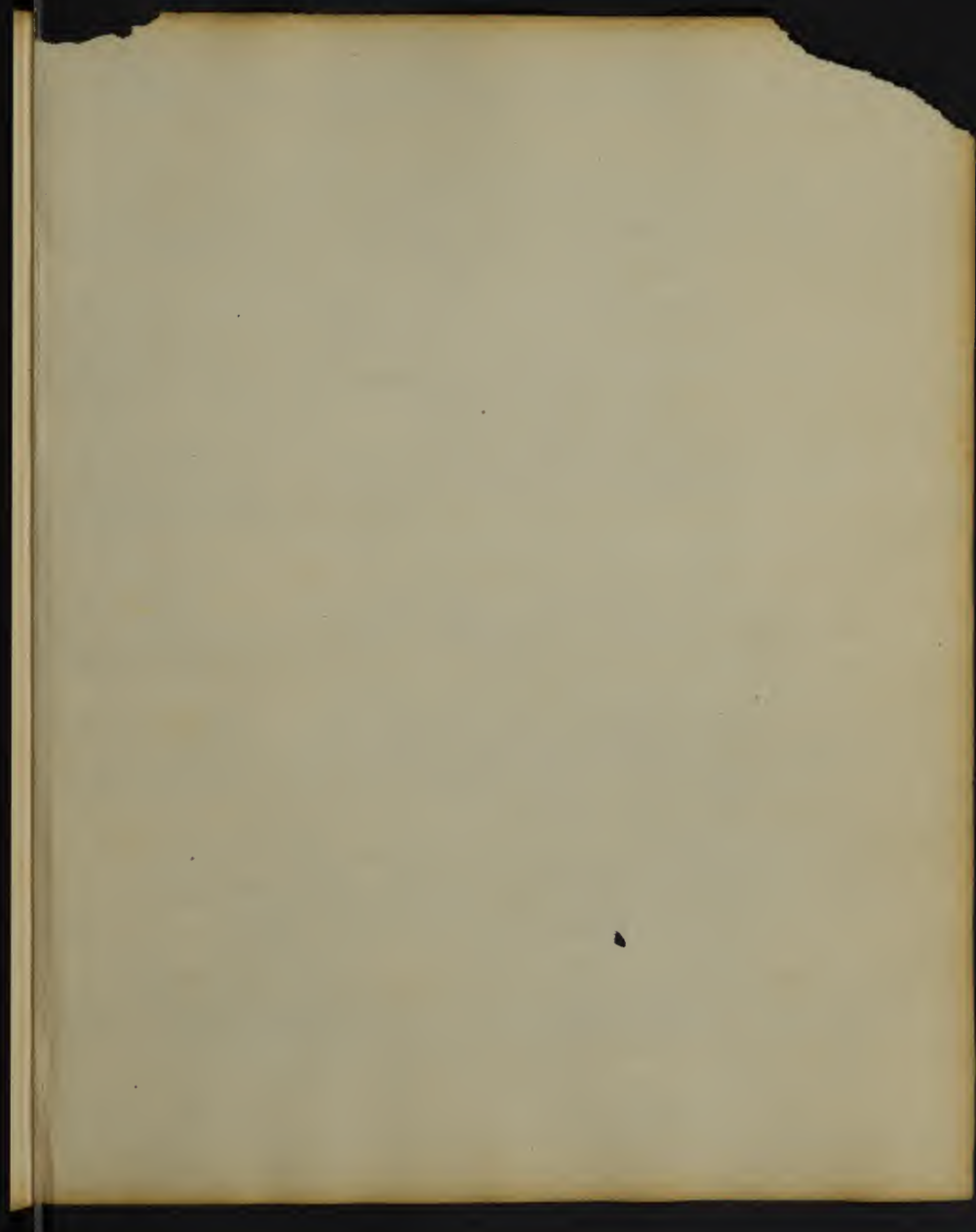
But if after the application of these rules, the intention remains dubious the contract is generally to be construed most strongly against the party bound - In Grantor &c - the words are his - he should have explained himself - 1 Pow 395 & 606 Plowd 140-66 1. 389
 Co L 104 & 202

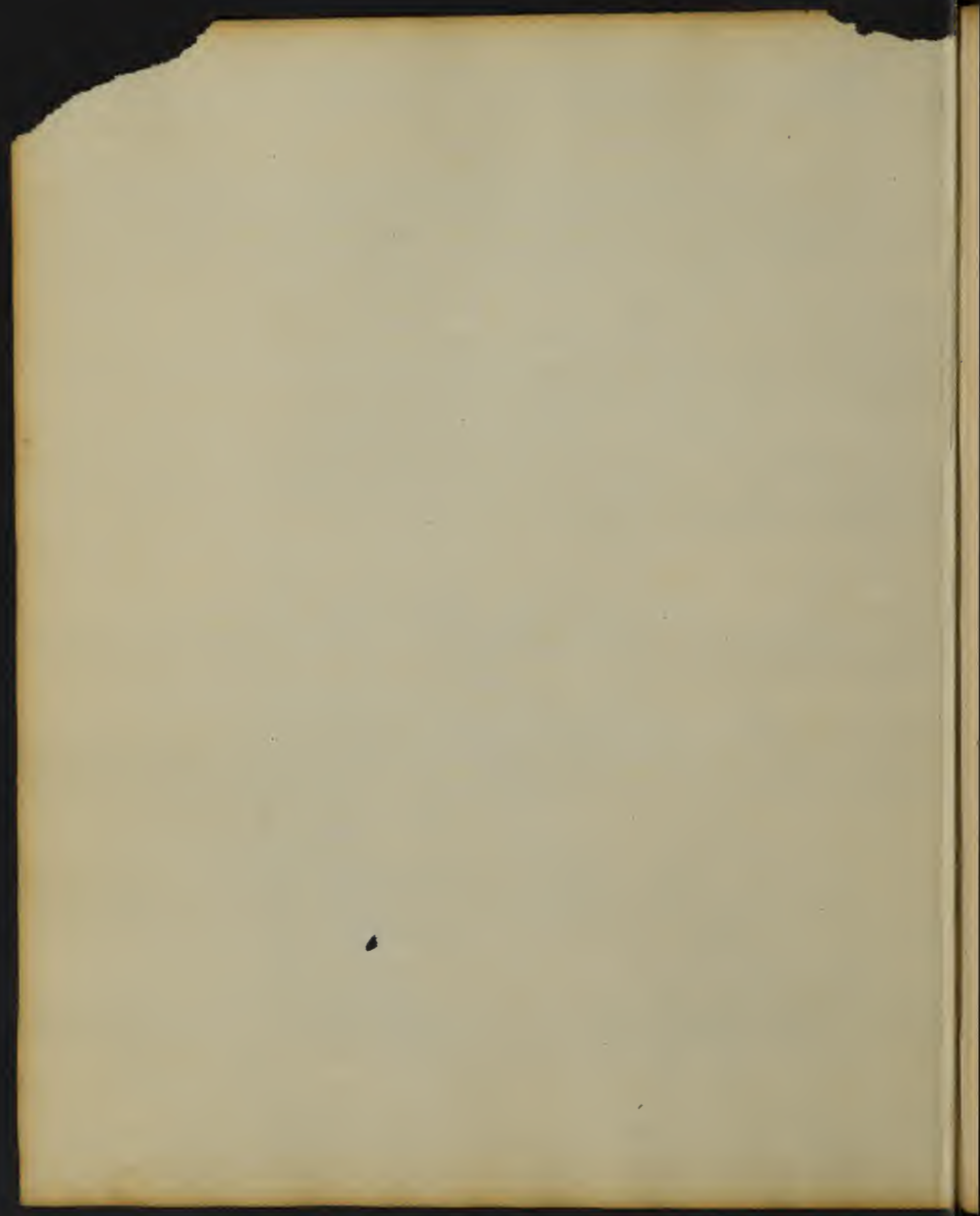
Exception where there is an ambiguity in the condition of a penal bond - construction is in favor of obligor - for the condition is intended for his benefit & is to discharge him from a penalty which is not favored 1 Pow 397 Doff-560 22

Where if one is bound in a penal bond conditioned to pay money at such a feast & there are two feasts in a year of that name the money is payable at the last - 1 Pow 397 Doff-174

Lesson of a covenant & condition Let if is holden if one is bound in a penal bond to make a sufficient & lawful estate in lands by the advice of D &c & he makes an estate according to his advice whether sufficient & lawful or not the bond is void 1 Pow 399-560-23 & 24 & 75 in qm - Would not Equity decree a sufficient apurement? 1 Pow 399-1 Eq Ca 18

Exception also where the application of the general rule will occasion an injury to a third person - as if tenant in tail makes a lease for life not expressing for whose life - the life of the lessor shall be intended - Less the issue or reversioner





might be in under Paw 400 Co L 42. Tho if made by
tenant in fee the lease would be for life Paw 400
Co L 42

Subject to these rules the words are to be construed
in the most comprehensive manner which they are
understood. In Covenant of warranty against the
claim of "all men" is a warranty against the claim
of all persons Paw 400

An indefinite appropriaion is
understood as universal one in relation to the subjects to
which it extends unless there is some manifest reason for
restraining it. Ex. Joint tenants make a bill of sale of
all their goods it includes as well their several goods
as those holden jointly. So if one saith that he
owns slaves none make a bill of sale of them all
his horses &c. Paw 400.1

When legal language
is used it is regularly to be understood according
to its legal acceptation. Ex. Limitation to one heir
so long as he has such an annual
sum extends to all his heirs universally
Paw 402 - 2 Roll 253 -

2^d - Is not the word heir
in this case manifestly used as a word of description?

So on covenant to settle by
after receipt of due proof all emblements by covenantor's
apprentice - Indirect proof is intended - proof made
is an action against apprentice Paw 405 - Roll 217

Contracts are to be construed according to the general intent
appearing on the face whole contract tho' opposed to
particular words in the instrument or agreement.

Baron 403- If Covenant by Lesor that he hermodens
former grant by which the Leas may be defeated but
Lesee may enjoy without hindrance from him or
any other person - Disturbance by any other person
than grantee of Lesor is no breach. 1 Baro 283

240- Mo 58- Cro E 43- C15

If the thing stipulated
for is not delivered or done as the contract requires
its value at the time fixed for performance is the measure
of the rule of damages. Baro 408 Dy 81- 1 Ver 217- 1 Eq Ca
321- 1 Tra 406 Anst 1010

Ex apt when the thing has afterwards
risen in value then the value at the time of trial is the
rule - otherwise the party claiming would suffer from
the others neglect. Baro 409- 2 East 211- 2 Ver 394

If several deeds be made at the same time
between the same parties respecting the same subject
they are all considered as parts of the same contract
& to be taken together for the purpose of construction.
Baro 2410- 2 Ver 518

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Genl. Rule the entire contract cannot be apportioned
1st. 65 Comp 666 2 Burs 1077 1 M. 234 Cong 585 781 1 Burs
172 7 M. 201 381 1 do 320 L R 1211 5 East 316 10 do 536 295
15 do 440 11 Burs 105 3 Burs 1237 2 M. 61 Ex Secus for a year
& interest of loan in the premises determine before the expiration
of the year 10 Co 127.

But in the case of Real contracts where there
happen a division of the subject matter of the contract there may
be an apportionment of the contract Bro E 481 2 East 575. Ex
Secus of B & W. case for one year & interest of loan in B. case
terminate before the expiration of the year - the rent may be
apportioned 2 Lut. 504 10 Co 127 Co L 150 2 M. & S. 276.

But rent can
never be apportioned in respect of time 2 P. 502 2 New 204.

In genl. if a corporation procure an alteration of its
charter by which a new & diff. business is super added
the stockholders who did not assent to the alteration
will be absolved from liability, on their subscription
to the capital stock especially if such alteration be
clearly prejudicial to their interests 5 Wall 383
4 Johns Ch 573 Coll on R 141 8 Mss 268 2 Penn. R 184
466 2 Matt. & L. 158

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Of annulling discharging and waiving contracts

Till the terms of a contemplated contract are accepted on both sides the contract is not annulled & either party may retract his offer Raw 384-385-652-1 Paw 261

But an offer on one side accepted by the other becomes a contract as that either by tendering performance according to the terms of the agreement may bind the other - Ex - A offers B \$20 for a horse & B says he will take it - A by tendering the money may close the contract 281 1447- Hob 41-2 La 241 20 Paw 632

So if on such an offer accepted earnest is paid or if a future time is fixed for the performance the contract is complete & the property bound 281 1447-8 Key 42-1 Paw 380 14131 262-1 42 64-

But if on the offer being made & accepted nothing more is done - that is - if there is no payment delivery - earnest or future time appointed & the parties separate there is no contract 1 Paw 281 281 1447. Hob 302 D, 30.380 14131 262-2 216-2 2 Recuen 373-

So if A agrees to sell goods to B if B within a certain time shall come to see them & B within the time gives notice to A that

he will take them according to the agreement - it is not binding for there was no contract - the agreement must bind both or neither & if he refuse there is no new contract 3rd Ed. 653 - 1 Pow 261 con

Before a right of action has accrued on a simple contract the parties may rescind it by mutually expressing their dissent - further there is no unenumerated right created by it - Mutual assent is withdrawn before either can make a claim against the other 1 Pow 412 420. 265. Ex & 309. Law N.P. 22 126. 2 Ld. 144. Watts L.P. 234 1 Mod 257. 12. 508

After a breach it cannot be discharged by agreement without a release by deed unless there is a new agreement substituted & executed - that is an accord & satisfaction 1 Pow 412. 13-16 12 Mod 538 Law N.P. 66. 126. Ex & 284 2 Mod 24. 259 Watts 234. 1 Mod 257.) Here there is a right enumerated & the question of assent is at issue - assent as to acceptance of a bill of exchange - assent may be discharged by parol after the bill is payable - Ex. 58. Dando 295. 4) Ex. 41) - This seems to be a positive rule of the law merchant.

But an agreement may be waived in Equity by a long omission on both sides to execute or claim under it & an agreement by lord & tenant to enclose a part of the common

Where a written contract is to be made if made
by deed the time of performance may be
enlarged by deed but this cannot be done where
the contract is for conveyance of lands or is of such
a nature that it would not be valid if
made by deed 9 Meach 68 5 Comw 506

2 Ct. R. 138 1 Johns Cas 22 32 C L 390 2 H L 383 Rindge vs 17
Res 356

Where a thing has in being a deed is voidable tho, it has
been attached for the whole having power it cannot be
divested by attaching or destroying the deed 14 C L 162
Palmer 403 Post 14 2 Me 556 2 Cas 220 2 Shaw 28

Ct R. . Cases where the thing claimed has in grant
as a water course for a thing lying in solemn agreement
can be claimed only by solemn agreement 11 C L 162 3 Bulst.
79 R. 11 R 188

Nelson sued Nelson for not delivering wheat according
to contract & recovered the full value of the wheat. Nelson
then sued Nelson to recover the price agreed to & paid
for the wheat but that he could not recover that he
ought in the first action to have insisted that he was
only liable for the difference between the contract
price & the value of the article. Such was the true
rule of damages in that kind nothing having been
said by Nelson - 9 Wend 131 7 Cowen 681

Where 3 notes were given for article, warranted in
a suit on the third note breach of warranty may
be shown either in law or mitigation 10 Wend 512

delayed for 20 years - here is a presumed abandonment
 Row 413-20 2 Bl 116 2 Ex Ca 207 9 d l w d 2-3

So where
 there was an agreement between intended husband
 & wife that she should have her property to her
 property to her separate use & she permitted the
 husband during the whole coverture to take the
 assets to himself she was presumed to have
 abandoned the agreement Row 241-441 2 Bl 82.32
 2 Ex Ca 21 Thir 409 2 Ch 24-117

But this pre-
 sumption may be rebutted by hard proof that
 she was dissatisfied during coverture & that
 the husband took the assets under an engagement
 to fulfil the agreement Row 22-16th 269

And a contract consummated
 & executed may be rescinded even by one of the parties only
 when there is a proviso to that effect in the original
 contract itself. Ex. as in whose the husband agrees
 that he may in a certain event return him on the event
 his spending may require & recover the price paid as
 money had & received (1 Row 415 172155 To 201- Law 818
 Page 23 2 East 145 182351 3 Ex 82.) This is a
 separable contract

But according to Row 416 if a contract
 will be for property set such a price as I shall name
 the parties cannot annul it because they have
 employed a third person to perform it - cites

2d. May. 91- 2d- What right has P.L.?

But a contract may be released after as well as before entire - and - I release may be express or tacit - the former is by a regular acquittance by deed - the latter - destroying or cancelling the instrument Paw 416

If he who is to be benefited by the performance of a contract prevents it from being executed it is assuaged - 1 Paw 416-20-265 & Co 91- Co L 206- Cr L 274 - or rather the other party is discharged - & in such case the party who was ready to perform is in the same condition as if he had actually performed - Ex. A - covenants to build a house for 12 for £100 - 12 prevents him from building - I may recover the £100 - Paw 419, Co L 210- post 1219.

I make a covenant to build a house that it shall be void on its paying £100 - to B on a certain day & on the day 12 is put off the money so that B cannot tender. I may assuage as if the money had been paid - Paw 420- Co L 210- 2d- Will not Equity consider B as trustee of the money for 12?

A contract may be annulled by a new contract of a higher nature for the same thing - merger Ex. A - simple contract merged in a bond - de in a judgment - (Paw 219-423- 6 Co 45 Dy- 21. 313a- 124 Exp 154- Bull 155 (1 Burr. 51 - 2 East 257) for the intention of the parties is not to furnish a true legal remedy but to furnish or

A. demise to B. a house for a year Rent payable quarterly
during the current quarter B. with A. cannot quit the premises
without any stipulation of the rent for that quarter Held that
as these facts w^d show a rescission of the original contract
it could never resolve the rent that would have accrued
at the end of the quarter nor a pro rata rent 10 C. 2
239 5 Decr 518 Whitcomb v. Clippins 7 C. 381

A material alteration by a stranger does not invalidate an instrument.
nor an immaterial one by a party during under it 10 C. 192 -

Where a note given for an antecedent debt is merely
 lost or is by consent of parties so altered as to render
 it invalid it does not preclude a recovery for the
 original loan - 14 C.L. 66 3d ed 340

If a drawer give the acceptor on a bill expired by reason of
 having altered it is a material part he may still recover on
 counts on the original consideration 29 C.L. 169 -

On a suit on an instrument that appears to have been
 altered Off must show that it was not improperly
 made 18 C.L. 409 -

substitute a higher one. Lenns it is said if the bond is
 given by a stranger (Paw 423. Dy 280) only an additional
 security. & a contract of a given degree cannot be
 extinguished by one of the same degree - it only gives
 another action. L Paw 424. Burd. Cr 257. Cr 257.
 81. Ch. B. 62) When pleaded by way of cure & satisfaction
 (- see the distinctions (Lew NP 126. 5 Co 17. Fica 426. 5 East
 232. B-257. 2 Gr 25. 2 Ast 169) in this way it may
 discharge the original contract

But where a contract of a
 lower nature is inserted in one of a higher merely by way of
 imited vidual to corroborate & enlarge the remedy, it is
 not merged. Ex Brebbs goods by deed - distress lies. Bre
 by deed acknowledges the receipt of money to account - Account
 lies on action on the deed (Paw 425. 2 Br 23. 12 Co 19. 1 Roll 118.
 2 Sals 256. Cr 2 (40) Here the simple contract is not
 intended to be turned into a specialty. The latter is dis-
 signed only as an additional security, & may be used as
 evidence in an action on the former. But the party is
 subjected for the property but once

Contracts by deed cannot
 be cancelled or discharged by party & Co ligamined. Paw -
 425. 5 Co 44. Felch 192. Cr 2 254. Notly writing, unless sealed
 Lound 291. 2 Wils 80. 376

Notly merely delivering up
 the instrument to obligor & obligee negates subseption
 of it (Paw 426. Cr 2 99. 2 Roll 110. Balow 156) Even
 payment or cure & satisfaction of a bond is not

a discharge the payment of the money due upon it is
sufficient 1 Pow 450-428. Cr 3254, Gelot 192, Jellu 1414

So
an order of the "decrees" annulled on a covenant is a
good discharge for the decrees Pow 428, 6 Co 43, Cro 399
450, Gelot 125, Cr 2406 2 Roll 138

Whether the right obligation
created by a contract unite in the same person the
contract is discharged at Law 1 Pow 438- Ex Obligor
becomes Ex or Adminr to obligee - 8 Co 130 Lat 208, Pow 432
Jellu 62- 10 Co 515- Lat 135- 8 Ru 699, Philb 147, Wray 226

So
if obligor marries obligee the contract is generally
annulled by the legal unity of the parties 1 Pow 438, 44
Law of a betrothal made in contemplation of marriage
is to be executed or performed after the determination of
the contract 1 Pow 442- Hob 216 Cr 257- Lat 225-
2 Rey 515- 1 Ch. Ca 117, 5 Bl 281, Holt & Hobart contra

Contracts
may be discharged by act of the Legislature 1 Pow 445
Lat 198- 8 Bull 51. 20 W, 238 In a contract to do an
act afterwards prohibited by Stat. So also by the
act of God. Ex Lebea covenants to learn all the
timber trees growing & they are blown down by
tempest 1 Pow. 446 10 Mod 268- 16098, Wray 226, So
if A. hires a horse to B. to be returned & the horse
dies of disease without bailee's fault he is excused Pow
447 Palm 548

A license to enter on land not insulating to convey and
interest in the land is revocable 15 Mead 387. See 8 East
308 7 Tamm 374 - permit license to make a tunnel
thru, Dept. land to take water to Off mill sawholes at
any time 4 East 108 14 Supt. 267 10 Johns 246 vice
11 Mo. 536 1 Cowen 570 4 Johns 81 2775

Rights acquired under & by virtue of an instrument under
seal can be waived only by an instrument under seal
34 C.D. 414

If one party to an agreement before he is bound to
perform his part & without preventing the other from
performing his part say he never will perform it is no
abandonment of the contract 34 C.D. 325.

When a contract of sale has been fully executed
by the vendor no fraud on his part constitutes a
complete bar to an action for the price unless
the thing sold was absolutely worthless or the
vendor has returned or recovered the property
on discovering the fraud. But debt in such
actions may in some cases be a bar of the fraud
by way of recompense tho he has neither returned
or recovered the property & if such defence go only
to a part of the consideration he must give notice
of it. See, if it go to the whole would it still be.

So if I covenant to serve 3 years for a sum to be paid in half yearly installments & die after the first installment & before the last - B's Est is not liable for the last 1 Paw 448. But a contract becoming partially impossible must be performed ~~except~~ 1 Paw 448. Howd 284

So if one is bound in a bond unconditionally to answer, bond by a certain day & dies before the day, tho the penalty is saved Equity will decree a conveyance against his heirs &c &c B-

But the act of a third person cannot regularly raise a contract - Ex Bond by A. unconditionally that B shall appear in an action on eight days notice & that if judgment is against him A will satisfy it & appears on six days notice & judgment is against him A is not bound to satisfy it 1 Paw 451 - W Jones 441

Now where a contract is by the terms of it to take effect or to be varied or annulled by the act of a third person his act will operate against it as provided by the agreement - Ex Contract to buy property at such price as J. shall name - the parties are bound by his decision & if he refuses to set the price the contract becomes void &c 1 Paw 445-16

When one has separate demands ag^t several an
offer of one sum for the debt of all will not
support a plea of tender stating that a certain
portion of the sum offered was tendered for one
so a sum tendered in full of all demands
being conditional is bad 11 C 217

Def^t cannot plead a tender as to part of the goods due
to the whole demand Parke C 15 5 T R 97. 4d 194
3 Stark. 1390 1397

Proof that def^t put his hand into his pocket to take
out money to pay the debt & before the money could
be taken out Off left the room & so money not
produced until creditor was gone does not support
a plea of tender 14 C L 338

Where def^t said "I come to pay you \$5. which I owe you"
& put his hand into his pocket but did not produce the
money & Off said "I can't take it the money is in the
hands of my attorney" hold no tender. Altho the jury might
have found a disparagement on part of Off 27 C L 378
4 C L 68. 3 Com. & Pa. 342 10 East 101 5 T R 432, 3d
683. In such case the creditor is entitled to a proper time to
ascertain whether or not has been made 18 Moul 639

If the damages are not matter of computation money
cannot be paid into court 3 Bos 1120 2 Str 906
88 R 47 1 do. 710 124 In an action for breach
of a promise of marriage 3 Bos 14 / vid 1 H Bl
296 in re 2 E. R. 128 qu

If a note is payable in certain article, & no place of
delivery is designated it must be to the creditor. Hence where
payable in article of promissory note a promise of his friend
the delivery is then to be made the delivery is then to be
made at his shop there from ex 4 Mead. 379 5 do 190
5 Carow 516 2 Kent 400 1 Cr 255

A tender made to the managing clerk of an atty. who at
the time disclaims authority to receive the money is
insuff. 28 Cr 324

If one offer a sum "as all that is due" it is not a good
tender 34 Cr 380. the tender must not be clogged
with any condition 34 Cr 293 12 do 23. 24 14 do 338
Antea 1194

John White
Washington July 1864

John White
Washington July 1864

A tender in bank notes, if not objected to at the time is
good 2 B. & S. 526 & 3 B. & S. 554 Selw. 173 & notes, -
7 Johns 476

Note payable on a certain day - interest payable quarterly
plea of tender before the day - not good - for the interest
is for the material benefit of both parties. 7 Johns 476
If payable on or before a certain day, is payment^t
or tender before the day good? 2 W. 173 & see -
where the time given for payment^t is solely for
the advantage of the debtor can be tendered before
the day? 2 W. 173 & see the 317. 2 W. 150 Bull
174 Co Litt. 212. b. 7. & 351 1. & 994 1. & 183
394 7 Ct. 377 17 W. 247 Kingman v. Pease Bac. Tender D.

A tender to be good must be unconditional so that
if none is due Off may, being his action for the residue
If Off offers to take a sum tendered in part of his demand
& def^t would only allow him to take it as a settlement
it is not a good tender 25 Ct. 375 3 Can. R. 50. 51
But 119 b. He who makes a tender must do it in
such terms as not to leave the other party to make
an objection by taking it 34 C. 530. "A tender of
\$5. in payment for rent good

1195 sender, 1 item, headed.

When there is no other means of the payment for your
the money & to be the money, mostly I believe for your, who has
for this. I must be satisfied in this regard, as I have a general request
I received of you to pay for the request, but in the return
is not secured, as to be sure, as the 1st of 1850.

When lived 2 years in her at her parent, the third year in
her parent also lived in her at her parent, the fourth year in
her parent the year when she died - in 1821.

[illegible]

How true is what Emerson said in his lecture, "Immortality,"
"There is no interest in death when there is that long interval
at all times between his life and the reaching the immortal
world, yet I feel I shall be long gone hence, & even
some days better sleeping than living." Ep 1st. Sep. 18.

Paym^t. of money into court.

A greater sum of money is tendered than is due it is
good for the greater while in the life but the creditor
must take or refuse the same as soon as he can. (See 1198)

It is a law in some of the states of America that if a
person is indebted to another for a sum of money and the
debtor is unable to pay the same at the time it is due
he may tender the same in the form of a note or bill
of exchange or other negotiable instrument and if the
creditor refuses to accept the same he shall be liable for
the same. (See 1199)

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of exchange or other negotiable instrument and if the
creditor refuses to accept the same he shall be liable for
the same. (See 1200)

Timewhen. When the contract is to pay money within
a year or longer and at a certain day before the
contract is made. As if a person is indebted to another for a
sum of money and the contract is made on the 1st day of
January and the money is to be paid on the 1st day of
January next. (See 1201)

When a contract is made for a sum of money to be paid
at a certain day before the contract is made.

If a tender is made to any one representing the creditor
in his agent it is good - to a suit in the matter also see
1 Ex 349 - to an Attorney clerk at the office in the Attorney
also see 14 C. 2 386

If one is bound to pay or deliver a collateral article
a tender of it according to the contract is a complete
discharge & the promisee shall never be entitled to
the money - *Slingeland v. Moore & Johns* 478 9 C. 79 a
Peyton case -

of the time place & manner & effect of a tender of specific
articles see 3 Stark 1397.8 2 C. 69 5 Tinn. 119 & de 473

A tender may be excused by the declaration or other acts of
the creditor y Lhms 476 8 do 476 3 R. 553 10 East 104
Pamph. B. 58 5 lly by 4 Efr 68 5 do 48 - 2 Dall
190 4 do 327

And 12 Mss 277. 8 East 170 that a tender made after
the stipulated time of payment is of no avail but see
2 Ct 659. 3 Starb. 1395

A tender is to be made within a given time as 15 Mo.
if the last day fall on Sunday the tender must be on Saturday
previous. 1 Maud 42 2 Cowen 518 608 n 7 do 147 8 do
27 1 do 75 12 Johns 178 and 2 Ct 82

it shall be ready the tender must be made at the settlement
 or payment time on that day - that is to say the tender
 must be made before the settling of the year to account & that the
 money or tender must be made at the year. The 403 4th 3
 4th 1198

If the tender is made at the place at any other time or place
 but on any day before the settlement or payment time for which
 the tender is made, within the time limit for the tender
 to be made. If the tender is made at any other time 1193
 2 Dec. 1194 4th 2 14

That a tender is to be made at the place at the settlement or
 payment time of that day before the year to account
 or payment time, and within the time limit for the tender
 to be made at the settlement or payment time in which it
 is to be made. 1193 4th 2 14

If money is to be paid at any other time or place before
 the tender is made, yet within the time limit for the tender
 to be made at the settlement or payment time, the tender must
 be made at the settlement or payment time. The 403 4th 2 11

When a person has a right to pay money at any time
 when he pleases, he must give notice to the creditor
 of the day he will pay the money & then at that time
 the settlement or payment time of that day is to be made.

1199

Tender when made & where.

1823.

Question of paying money ^{into} ~~at~~ place fixed & the tender made
at any time at the place or time is good. The 11th.

If a tender be first made by way of account or if it be made previous
to the tender the tender is not validly made. The tender must be
made - but if the contract be for the payment of a sum of money
or a bill & the tender be made or if the tender be made on account the tender
must make a special account of the tender. When the tender is made
to receive & if the tender be not in a reasonable time the
contract is voidable & the tender is not obliged to receive
the tender at that time but may demand the money. The 11th.

When the contract is to pay a sum of money or a bill & the tender
is made on account it is necessary on a claim of tender
to set out the particular articles, whereby they can be
known & distinguished from others - for if the tender is
made it is a case to our section on the contract & the
articles, and in the contract. The 11th. End.

The contract is for the payment of money or a bill & the tender
is made on account of the contract or on account of the contract
the payment is not goodly unless at the time when
the contract is for the payment of money or a bill & the tender is
made on account of the contract or on account of the contract
the payment is not goodly unless at the time when
the contract is for the payment of money or a bill & the tender is
made on account of the contract or on account of the contract

Where money is to be paid so many days from date the day of the date is excluded in computation time & if the time of payment happens on Sunday or must be made on Monday 2 B. N. 82 i.e. when the instrument containing the contract is not negotiable —

A tender of payment by a purchaser to obtain the article purchased is unnecessary where tendered & the tender would be unavailing 32 B. L. 360

Said 1st Ha 576. 1st Saund 33. d. That a tender may be pleaded
to a quantum meruit-ga. L. 255. But it cannot
be pleaded to a count for unliquidated damages in an
agreement 24 C. L. 41.

There is no case where a tender of a part of the damages
determined by a trespass will affect the amount of recovery
16 Wend 610-

2 Saund in case of a demand by the creditor unless he pay
or have paid the price. 24 C. L. 113.

Effects of a tender

1200

contract the tender may be given in lieu of the action - but if it were
not then a tender^{or} payment of a sum equal to the sum due the
original contract with the interest with reason & time - after
the loss of the recovery of it - the tender never sets the validity
of the money taken in case the tender is a payment in
the action which must be paid & paid in action - when
it is not.

If he is not in such a contract after the tender he cannot
plead in the next day the tender but he must
show that he has changed his mind to pay the money
& is not bound by the fact of a tender in the first
place. H. 12 10. (see p. 13)

that is in the tender is only a tender in the first place
and is not a tender in the second place.

In the case of tender of a sum of money the tender
must be made within 10 days - 1796 - 1813. 1 then 407. 2981448

When a person is in a contract for a sum of money and has
suffered a loss he is not bound to pay the money in the
first place but he is bound to pay the money in the second
place if he is not in a contract for a sum of money and has
suffered a loss he is not bound to pay the money in the first
place but he is bound to pay the money in the second place.

Effects of a linder

Under the linder, which is to pay a series of money in order to
 obtain a linder of the money in gold, the work is done.

It is also to be noted that the linder of money is to be
 the money in order to obtain a linder of the money in gold.
 The linder is to be done.

I have just received from you
your letter of the 10th inst. and
am glad to hear that you are
well. I am also well and hope
this letter will find you the same.
I have not much news to write
at present. I am still in the
same place and doing the same
work. I hope to hear from you
again soon.

George H. Kingree 2 Dec 1888

If one have the estate of a minor in his person & refuse to support such minor he cannot be sued in such by any one who furnishes such support whether he be a guardian or not. If he be not guardian one may be appointed who will call the estate out of his hands & if he be guardian then he must be compelled to pay for the support by some other person than such debt 2 Ct 386

When interest may be recovered on bookies 1 Ct R 32.

Assumpsit will lie in all cases where book debt will - but
book debt will not lie in all cases where assumpsit will - but
generally, it will lie only for such articles sold & delivered
- for the use of such person or things as are let & hired
& for such services done by one person for another as are
usually in the ordinary intercourse of mankind charged
on book & wherein the law implies a promise that the
purchaser of the goods will pay the seller as much as they are
reasonably worth & that the performer of any service shall
receive as much as he reasonably deserves. - 2 Leo 167. 8

At tort or any consequence of it cannot be the subject of this
action - nor can a contract as such - but where a person
contracts to do a certain act for a stipulated price the service
tho' not the contract may be charged on book & on proof of
the contract a recovery may be had of the sum agreed to be
paid / 2 Leo 158 / and 167. R. 78. Kirby 289 2 Root 130

Where a person paid a sum of money to one person for the use of another
for which he alleged debt provided to pay an equal sum in sheep
it was held that this action would not lie. 2 Leo 158 Kirby 289

Decided that interest on a book may be recovered where there
is an express or implied promise to pay it - but where there is
an express promise to pay interest it must be proved by other evidence
than that of the debt - the law will presume a promise to
pay interest to merchants where they knew it to be the custom to
charge it Kirby 209 2 Leo 158

This action will lie for bellum & done to lender July 158 / but not for use & rent of lender / 2 Dec 168, for, having not our bonds rendered sufficiently

It will not lie for a mistake in a former settlement, on looks July 150 2 Dec 158. Root

2.

Where no price is agreed upon by the parties If a bellum recover what is reasonable & just according to the going price at the time of the sale - in which case any fraud or deception in the goods charged may be taken into consideration in the estimate of their value 2 Dec 168-

Where there is an express agreement for a particular price It will be allowed to recover that sum but ought to prove the agreement by other testimony than his own - It has been held that where goods have been sold & delivered at a certain price agreed on between the parties that notwithstanding for such price they should not set up for his escape fraud or deception in the goods - but shall pay the price agreed & have recourse to a different action for the damage received in an assurance of the fraud in 2 Dec 169.

Decides that an order to the exchequer for value received is a proper charge on looks - for it is customary to charge there on looks 2 Dec 169. Root

Decides that where money has been paid on a note for which a receipt was given & lost & afterwards a recovery was had on the note for the whole sum - Receipt might charge the sum for which the receipt was so given on looks & recover - 2 Dec 169 Root see your contract -

12 May 166 -

Our certain one looks well not like her or sister and
the substance of her account to Emily 50. Oct 37. 2. 28

Return on back his in favor of one joint partner and
the other for some as per minute on the other side of
2 Root St.

Neophanes, qui nistis an inf^t & l'is gaudian mag^{is}
le chagⁱⁿ - on look - 2 Nov. 1888 Via L 377n

If money as is paid in Bonds by debt after action but
can it be allowed? 34. Let 444 that a payment after
action but cannot be set off but an order was
made that no execution should issue for the
sum thus paid

Giving a promissory note for a book debt is no payment. It only suspends the right of action during the time allowed for the payment of the note & a receipt in full of all demands so such debt does not preclude the party from showing the circumstances under which it was given & 1 John 389. P

After² H has produced his book or over he may not alter it so as to surprise Welf. on trial. R. 100 273.

If a Book debt is assigned it remains the property of assignor as it respects his own creditors until notice of the assignment is given the debtor 3 Day 276 —

Book debt

1204

Testimony. It has been held that the testimony of the parties ought only to be admitted with regard to the quantity & quality & delivery of the articles charged the letting or hiring of articles hired & the actual performance of service with the time employed - but where there is any part 2. special agreement as to the price or mode of payment. & expressed & proved by other testimony. 2 Rev 170.1 - But the practice has been diff. - 2 Rev 171

18

Where any matter is pleaded in bar or any question arises on a collateral point the parties cannot testify. 2 Rev 171

The C. cannot inspect the production of books & papers but where the party refuses upon the challenge of the other everything shall be presumed against the party refusing - 2 Rev 171

In each case the amount of above § 17. may be adjusted by auditors & justs rendered for the sum awarded against the party in error &c. 28. 2 Rev 171 - 8. 180

In this action where it appears on trial that Pff is in arrears to deft to balance book acct. Deft shall sever the balance of Pff with his acct. 2 Rev 171

If Deft neglects to exhibit his acct. on trial to be adjusted & shall obtain and bring his action to sever the same if he recover justs he shall not be allowed any wt unless he can heat appear that he had no knowledge of the former trial or was inevitably hindered from appearing & exhibiting his acct. 2 Rev 127 St. 102.

1844

* The court must be preserved to give its only instituting
a suit within the time will and cannot be good 155
20007. S. 804

But in an action of B.D. one party may exhibit an act. of more
than 6 years standing to counteract the others account for articles
delivered within 6 years. Day 245

Charges for any thing done or delivered under a
special contract but which afterwards becomes matter
of account by operation of law the consequences of
a revision of the contract cannot be proved
by the party who made it. 594 - the right to charge
must exist when the work is done or goods delivered
(Day 104 10th 73. 74 11th 289 7th 344

Book debt.

1205

The an action of book debt depending Debt may bring his action of book debt agt^t off for the prior writ will not abate the latter tho it may suffice the writ 2 Ser 171. Root . 162 R 171

When Debt exhibits his writ before a justice it exceeds \$15 the justice cannot award just^t for the balance 2 Ser 172. St 102.

- × Book debts are abolished if not used for balance or accounted for with the original debt or otherwise given for the balance or unless the debtors name is introduced to the writ or receiver's book or by two witnesses within 7 years cannot be recovered if the original debt be dead St 101 / but the time this Stat is engaged when there will not be completed St 101. ▲

But if both parties be living / the debt is barred by the Stat unless used for ac^t or rep^d within 5 years / St 102 / but the time the debt is out of the state or the creditor shall be absent from the U.S. for legally impossible to sue in his own name shall not be computed as a part of the time - St 102.3.

If the parties testify to their ac^t out of C. their testimony must be taken in the same manner as in other cases / St 101.2 and St 884

Under the plea of Nil debt to this action the Statute of Limitⁿ may be given in evidence 2 Root 207 ♦

1426 2071

A more exacting scrutiny of public affairs in his part of
his estate can not return but must attack & if they can
be taken by the office for a regular attendance is not the proper
remedy 15 Feb 490

Foreign Attachment

1206

This is a remedy calculated to enable creditors to compel the debtor of their debtor, to pay over the debt to him whose their immediate debtor lies out of the State or has absconded so that the creditor cannot compel him by legal process to pay the debt - this remedy is good in all cases where justice requires it 2 Sco 177.

- (1) This action will not lie in case of torts for it will lie only for the purpose of collecting a debt. 2 Sco 177.

The creditor may attach the lands or goods of the absent debtor whenever they may be found 2 Sco 177. § 12 p 1. 2 the attaching agent shall make the whole in any persons hands liable & he shall exonerate them to respond the jury. reversed 2 Sco 177 § 12 p 2.

Where such lands cannot be come at so as to be attached the creditor may bring his proper action agt. the absent debtor & an attested copy of the writen left 14 days before the time of trial with the absent debtor atty or at his usual place of abode. shall be a suff. intimation for the creditor to bring his action to trial unless the absent debtor be an inhabitant of this State or has resided here when a copy at sup. must also be left at his last usual place of abode. 2 Sco 177. § 12 p 2.

The object of this H. being to deprive debtors concealed by debtors a garnisher will not be permitted to testify that he has no effects re in an action agt. the absconding debtor - for he is interested in the result of the suit 2 Sco 177. § 12 p 2. Neither will Dft. be permitted to plead that the person with whom the copy at sup. was left was not his atty. 2 Sco 177. § 12 p 2.

Apr 18th 1861. Pending in another State is / Boston in
absent, 3 John R. 101. D. 2

Foreign Attachment

1297

2/ All debts due to any absent debtor are considered as effects in the hands of the persons from whom they are due who are deemed agents or trustees & recovery may be had agt them in the same manner as for goods or chattels - 2 Rev 178.

The atty. shall be committed to defend in the action agt the absent debtor: but if the debtor be not of this State & no person appears to defend the action shall be continued to the next t. & if necessary a second continuance shall be allowed to give time to notify the principal - 2 Rev 178 St. 12 p 3

From the time of the service all the goods & effects of the debtor in the hands of his atty. & debts due to him from any debtor are liable to respond such judgment as may be recovered notwithstanding any subseq^t disposition of them & if the atty. shall remit or dispose of any effects after service of the writ or shall refuse to expose them on ex^{ta} he shall satisfy the same out of his own estate - 2 Rev 178 St. 12 p 3 -

When judgment is obtained agt the principal the creditor must take out ex^{ta} & must search for the principal's estate & make demand of this atty. in or whom service of the writ was made - called garnishee

The garnishee must expose the effects in his hands on ex^{ta} or if he be indebted to the principal he will be authorized to pay the amt of what he owes on the ex^{ta} & such payment will be bar to an action brought by the principal. 2 Rev 178. St. 12 E. p 165. St. 163 p 7

If garnishee refuses to expose the effects or pay the debt which is the ex^{ta} must be returned non est. as to the principal & also

A partner of a commercial house established in a foreign
country & who resides here cannot be held as guarantor
of a partner of such house on account of debt due from
such house contracted at its place of location 1821 80

In Eng the Guarantor is not an admissible witness to prove
the justice of his demand 1827.

Via Post 553-4 where, it is said that this is an equitable
action &c

Foreign Attachment

1208 3

that demand was made of Garrison & that he refused to show the estate be - 2 Dec 1789. demand must be made previous to 50 days be 174/2 Post 6

Then gives a dis-fee from the Clerk of the C. where judge was rendered agt Garrison requiring him to show cause if any he has why judge should not be rendered agt him
St 173/4 2 Dec 1789

The clerk must state the whole proceedings particularly the demand of payment of the ex^t of Garrison & his refusal - & if Garrison neglects to appear or refuses to disclose on oath judge is rendered agt him on of his own debt St 173/4. / This action may be tried by Jury
2 Dec 1789. Recd 128 - 295

If the Garrison appears & defends he is allowed by St. to be a witness - but if in his testimony he denies that he has any of the principals effects or is indebted to him the P^{ff} will be allowed to bring other evidence & is not concluded by the testimony of Garrison - 2 Dec 1789 Recd 138 / but he cannot object to admission of Garrison to his oath 2 Dec 1789 Recd 50/1 but he must testify in person & his deposition cannot be submitted 2 Dec 1789 / Recd 149. Post 7

Garrison may show any mistakes in a settlement for which a note was given that is the ground of claim 2 Dec 1789 Recd 148, & he may give in evidence the principals acknowledged that Garrison did not owe him - for P^{ff} comes in place of what dollar 2 Dec 1789 Recd 128 353.

Jur. cog. guarantees that they are jointly & severally agents
of the absconding debtor is good Day 238 1 Root 478

The interest of one partner in a debt due to
the partnership cannot be taken by foreign
attachment to satisfy his individual debt
without shewing what that right or interest
is 2d Ct R 514.

If property is of such nature & in such a situation
that it can be attach'd in the ordinary way.
Foreign Attachment is not the proper remedy, 18 Mo 490

In an action by foreign attachment D^{ft} cannot plead that he is not an absconding debtor for if the writ be otherwise well served it is suff^{ce} to hold D^{ft} to trial - 12 Bro P C 1 Root 276 But garnishee upon s^{ci}-fa may plead that the principal is not an absconding debtor 12 Ser 179. 1 Root 276, for if he be not garnishee is not liable -

Where a recovery is had by force of this action & the estate
of the principal by process & just taken from garnishee he
is discharged from the principal & in an action brought agt
him may plead the said issue & give the \$1. in evidence / 2 Dec
1801 L. p. 165. b 1 L. R. 180 / 2 Day 498 & Cowen 314

But if Committee at suit of principal pleads such foreign attachment
or gives it in evidence he should prove that the principal was
indebted to the attaching creditor before it might be collection
between the attaching creditor & committee to disprove the principal
/ 18th 727. Exp 166 / But principal may show that the foreign
attachment was commenced after an original action commenced by
/ or in such that pleads against the foreign attachment. Exp 166 18th 727.
dial. 291. 250 / qm in Cl.

where to sell on land Pop pleaded that the debt due from him to P^p had been attached by P^p's creditor or pleaded even by P^p that his creditor had not taken action agt him the P^p for the same debt & pending the suit had not for "attendant and not good on defence - L^o 231 L^o 2573 157.

A debt can not be attached by foreign attachment before it is due
the the judgment on attachment before it is due is not rendered

+

3 leaves R 323.

Can Executor is not liable in foreign attachment
for a legacy in his hands 184. R 385
7 Mf 8th 271. 8.246 5.289 7-259

A debtor who shuts himself up is an abscondent. 2 Rost -

Foreign Attachment

1200 3

till after it become due - hence if Deft pleads the attachment - the P^{ff} might reply this matter is become judgment - (Exp 231.2 Cio & 184)

So too in Ct for our \$1.63 p 5 says debts due & due \$1.65 p 10. says exp should be stay till the debt and the principal becomes payable -

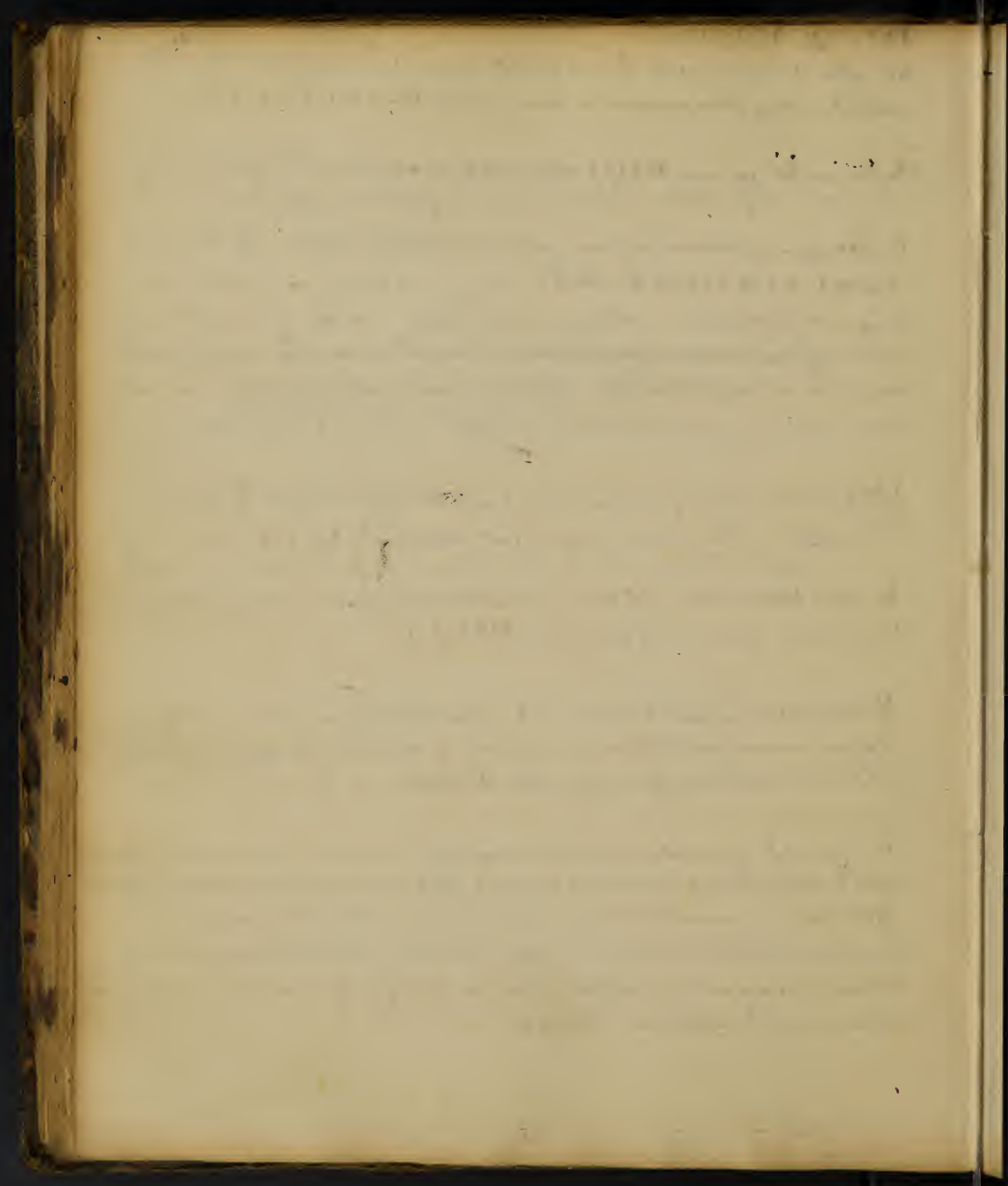
A debt upon record in Eng cannot be attached by custom of London Exp 232 115 N 312.13 Cio & 63 / says in Ct for our \$1.63 p 5 says all debts due & this is a debt due - and for the \$1. does not appear to contemplate debts of record as it says the Agent shall be obliged to account for the same under oath & send the bill as the same here as in Eng^t

If Deft pleads a foreign attachment it should appear that P^{ff} / the principal had notice of the proceedings on for attachment - Exp 232 3 miles 297

In this state the effects are liable to response the judgment from the time of serving the writ \$1.62. p 5.

If this citation is not before a Justice of the peace & no Citty or appears to defend the case must be continued three months at least & not exceeding 9 Mo^s \$1.64 p 1

Sci. fa. expt. garnishee must be signed & be made returnable before the Justice who issued the original judgment if the demand does not exceed \$15 when it must be returned to the C. & in the County where one of the parties in sci. fa. dwell - but if the Justice be dead & the demand does not exceed \$15 it must be signed by a made returnable before any Jst or Justice - \$1.64 p 2.



Effects in Garnishee's hands must be demanded within 30 days after they are liable to satisfy the judgment - St 15 p. 3 - / Sec 1 they are not liable and
2 Root 324-233 ante 3 -

Or suit & Sci fa. shall be maintained agt garnishee & unless he do within one year after the right of bringing the same under St 15 p. 4

If it appear on the hearing of Sci fa that the debt and the principal was not payable when judgment was made on exⁿ the garnishee shall be allowed no reasonable cost for defending agt Sci fa to be deducted out of such costs / St 15 - / -

Where it appears on trial that the debt was bona fide assigned before the service of the writ / origin! / it shall not be liable to be taken by this process / 2 bio 150 / & if Garnishee give the assignee notice of the suit as required by St 15 p. 1 & assignee does not indemnify him or there required he may suffer for default at the suit & shall be a bar to the claims of assignee St 15 p. 1 in Root 234 545

If the assignee or owner shall give security as required by St 15 p. 1 & make effectual defense agt the Sci fa they shall be entitled to the bill of cost that shall be recovered agt the St in Sci fa - for attaching Co - but if the fail to make such defense the St & remainder agt Sci fa in Sci fa - for Garnishee) shall be a bar to their claims - St 15 p. 2

If assignee give the security at sup - & garnishee on due notice given him neglects to appear & decline on oath (if required) on trial of Sci fa. the assignee may recover of him - for he can take no benefit of the St - or security given - St 15 p. 3

In *Li-fa* as *Garnishee* it must be shown that *principal*
was an absconding debtor & described in the original
process - 2 *Met* 238 *Gaylord v. Pease* C.C. *Litch* 67.

Copy was left at home of *Garnishee* he being about
a *year* his return without actual notice of the proceeding
he paid the debt - payment held valid - so where the
contract was to do an entire service for an entire price
& before service performed process issued held that nothing
was due 3 *Met*, 302, 5 *Pick* 65, 12 *do* 268, 248,

The C. before whom any discovery is pending may issue a commission to take the disclosure in oath of Garnishee - in certain cases & if he refuses to disclose he cannot take no advantage of the st or security at suit - st 116 p 3-5 - Ante 3

If the original creditor or assignee commences an action for the recovery of debts or effects under the lien of a foreign attachment - if first judgment be rendered for st the C. may allow st cost to be deducted out of the debt or may allow st cost or allow no cost to either party at their discretion st 116 p 4-

Cases in the hands of st grantee are liable to be taken by foreign attachment - 2 Root 528 Rely 279 - / So too if he holds the effects in trust under a st conveyance - 2 Root 129 P 488 252

Property taken and sold upon st discharge the garnishee/protector the st is not the principal - 1 Root 295

If principal is not an absconding debtor a garnishee is not liable & may take advantage of it on st - 1 Root 276 296

An absconding debtor cannot plead that the st is not his own effect of law in his hands - st 81

1243 6 11

1212 v

1834

Received of the Hon. Secy of the Navy
the sum of \$1000.00 for the
purchase of the ship "Hull"
for the service of the Navy
at New York

For the purchase of the ship "Hull"
for the service of the Navy
at New York

Witness my hand and seal
this 10th day of March 1834

Voluntary Courtesy

No man shall do another a kindness & then charge him with a recompense

16 cents R 585 1 Saund 264 n 1 1 Foub 336 Mob 106

Yelt 41. B 8 R 310 5 Lohr 178 n 3 do 434 8 do 436

10 do 361 2 R. 410-

A mere voluntary courtesy will not support a promise
Mob 106 Efr 87.-

and that shall be deemed a voluntary courtesy which has
been undertaken without a prospect of a certain recompense
Efr 106 -

An action cannot be sustained for trouble in going to a place
to become laid for debt 11. 62 1142.

17th Nov 1841
Dear Sir
I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the above named subject. I am sorry to hear that you are not satisfied with the result of the examination. I have, however, no objection to your making such use of the facts as you may think proper. I am, Sir, very respectfully,
Yours obedient servant,
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of joint business pay money for their principal must be
specially settled from a joint fund unless such fund
be a joint business one or a copartnership fund & lower
168 3 Bor 225 2 Com Cur 184 1 Ch A. 8. 4 2 BR 282 5 Ex 194

Prin

"I hereby agree to remain with Mr S. two years for the purpose of
"learning the business of a clock maker" contract void on maturity
See, 4 Whitehead 5 Brigg 34 14 L 310

Assessment can be determined by a stranger for supplying
necessaries to one whom Def^t was bound to support
5 Mart 558 cited 4 Johns 72 13 de 480 14 de 184 16 de 281
1 Ex 270 2d 789 3. 1. 1 Mo. Bl 90. 3 Bor 252 5. 148

Assumpsit

1214

This is an action of trespass on the case whereby a compensation in damages may be recovered for an injury sustained by the non-performance of assented agreements. Selw. N.P. 53.

(Agreements are distinguished into agreements by specialty & by parol. Selw. 53. Vic. Contractus) This action is confined to agreements by parol - Covenant (Bro. 2a 505) or debt being the proper remedy for the non-performance of agreements by specialty - If agreements are merely written & not specialties they are parol. 1 BR 351. See Selw. N.P. 53.

The essential parts of every parol agreement are the promise or undertaking of one party & the consideration on which such promise or undertaking is founded proceeding from the other party - This promise is expressed or implied (Selw. 53) In actions of Assumpsit a consideration must be stated & proved for in parol agreements that law will not imply a consideration (vid. 1 R. & R. -) said that Bills of exchange & promissory notes form an exception to this rule - i.e. are they not considered quod specialiter after transfer? See vic. Butts 3 226. 375. 582b

To sustain Assumpsit there must be a sufficient consideration i.e. a consideration either of benefit to the Def^t (3 BR 24. 638) or of benefit to a stranger (Bro. 2 194) or of damage or loss (1 East 194) sustained by P^l at the request of Def^t - for ex mudo Bro. Howard 305^a 308^b Selw. 53

Any act of P^l from which Def^t derives advantage or any inconvenience or loss sustained by P^l however small (Bro. 2 67. Bro. 70) it may be is a sufficient consideration if done or suffered by P^l with the consent (1 BR 21-8^a 610) either

Consideration.

Where there is no personal credit given this action will not
lie 154e 108. 2d 14 Bl. R. C. 13 115-

2 Rev 210

4 B. & H. 227

2 Cowen 246

Where an agent acting in the service of his
principal is subjected without any fault of
his own to a loss by a fraudulent suit brought
by a third person such loss will constitute
a sufficient consideration to support a promise by
the principal to indemnify the agent 1 Cr. R. 522

In Ct. our notes of hand are considered to be in nature of
specialties - want of consideration cannot be averred to
destroy them 1 P. Day 350 nor failure of mind to avoid a
specialty 5 Cowen 292 2 Mills 347 2 John 177 - 13 do 430 A. Ct.
5 Cowen 506 510 & 188m 5 Ct 9

A receipt will not be by the signature of a third to release the
account due except on an express promise that his right
may then be recognized a partial payment made to him on a P. D. 250 -
negotiation made for payment of the balance of March 317 2 Cr. R. 111
16e 10. 245 4 Cowen 13.

express or implied of the Debt or in the language of pleading" at the special instance & request of Debt^r - The consideration however must be of some value, in contemplation of Law or Assumpsit cannot be sustained (1 Ball 23) - via Bro Ea 667. 1 B. 920 where it was adjudged that the acceptance of a sum of money by Debt^r from P^r to pay over to P^r creditor was a suff^t considerⁿ to support a promise by Debt^r to perform the work - see via Peckh. 281. where the Ch. Justice considered the detention of the money as a damage to P^r - The rule however is correct (Semb. Selw. 54.5. Ex. 4 in consideration that B. should make ^{an estate} good will to him as his covenant should derive promises &c. - Promise holden void - no suff^t considerⁿ for B might immediately determine the estate. 1 Ball 23 - 3 Leon. 88. Selw. 55.

So the mere performance of an act which the party was by Law bound to perform is not a suff^t consideration. C. where master of a ship resists promised to pay the mariners an extra sum for extraordinary exertion - promise holden void - for the mariners are bound to exert themselves to the utmost in preservation of the ship - Selw. 55. Peckh. B. 92 - So natural affection tho suff^t to raise an use is not a suff^t consideration on which to found an Assumpsit. Bro Ea 755 P Love is not a suff^t considerⁿ on which to found an action 2 Leon. 30 Selw. 57. - See D. B. where it is said that the release of an egg of redemption is a good consideration. & the C. L. will take notice that mort^g has an equity to be in Ch^g. see via 2 Wils. 87. where it was holden that the release of an Egg of redemption was of no value - correct Semb. x

In what cases it lies. Forbearance to sue

3 Bos 148 m

Cooper 437

Doe - 210

1 Bos 101 no

When one of several facts stated in an action of assumpsit is an express promise it may be proved by parol tho' made more than 3 years before action brought, 1 Ct. 16510

Where a corporⁿ is acting within the scope of its legitimate purpose, all formal contracts made by its authorized agent are express promises of the corporation & all duties imposed upon them by law & all benefits conferred at their request receive implied promises for the enforcement of which an action will lie 7 Cranch 297
307 12 Johns R 231 14 do 119

If one make a promise to another for the benefit of a third the third may maintain an action upon such promise 9 Geo² 25 m. 1 Regⁿ 1. 1 Burr 23 1 Green 284 1 Kent 318 322 5 R 302 1 Green 171 2 Lev 210 Cooper 443 1 Bos 102 m B 3 do 149 n a 15 Alp 286 1 Green 429 3 do 192 1 Johns R 129 2 do 204 - This rule does not extend to contracts by specialty 9 Geo² 177 m 1664

Where A. was indebted to B. in one sum & B. indebted to C. in a less sum a promise by B. to discharge A. of so much of his debt as amounts to B's debt to C. holds to be a good consideration for a promise by A. to pay C. the debt due to him from B. Selw 56. Godd 56. 149. So where Ex^r. agreed to take a less sum payable by installments in lieu of the original debt in consideration of which C^t promised the Ex^r. (P^r) to pay him the lesser sum - holdsen suff^t consideration - altho the acceptance of a less sum for a greater is no satisfaction - yet here the true nature of the action was changed for in an action for the original debt must have been in the debt but by the agreement it became the absolute debt of the Ex^r. who became liable for a debt owing to the amount of the original debt. 10. 11. Selw 56. Ex^r & C^t.

If a creditor at the request of his debtor forbear to sue him for a certain time it is a suff^t consideration for a new promise by debtor on which to found this action (Stee 875. Selw 57) So if a creditor at the request of S. D. forbear to sue his debtor for a certain time it is a suff^t consideration to support a promise by S. D. to pay the debt - tho by H. 29. Car 2. this agreement must be in writing Selw 57. But its being in writing is matter of evidence at the trial & need not be stated in the declarⁿ. Lewis in plea in bar dem^r. vid) & the Court after verdict will presume it was proved to be in writing. 4 Johns. 237.

Forbearance to sue an Ex^r. (bearing a p^rto.)

1 Pow & 353

Moore 1157

Cr. L. 10. 455

The action on an implied ass't being an equitable one the sum only justly due at the time of the promise liquid in the debt can be recovered & Def^t may prove all equitable circumstances which can avail him to lessen the demand but they must be such facts as are set off the balance & form the consideration of the promise but he can set up no separate independent claim nor can any set off of mutual demands in Eq. be made in this or any other action
1st. 16 399 in note -

W. Supra

How. 73

When work is done under a special contract not completed within the time limited but performed in after the day with the consent of the other party a recovery may be had on the common counts but the compensation will be that limited by the contract
only during the pendency of the work notice was given of an intention to demand more or complete the debt by his refusal to accept or complete performance within the time when off may raise in a quantum meruit 16 Mead 586

1 Pow & 353

Howe. 73

Yumpit

127

for a certain time upon a simple contract of his testator is a good consideration to found a promise by Est to pay the debt (Cro 147. Selw 55. Cro 1273) To forbearance to sue an Est for a reasonable time for the debt of his testator tho Est have no asset. (1 Roll 24) But the agreement must be in writing by 29 Barz 1 Linn 532. Selw 57.

That forbearance to sue may be a good consideration it must be either absolute (Cro 683) or for a definite period of time (Cro 147) or a reasonable time (1 Roll 34 p 133) Forbearance for a little (1 Roll 23 p 125) or some time is not sufft. Selw 57.

In cases where action is brought against Est. on a promise made in consideration of forbearance of suit an objection will not be allowed after verdict that the declaration does not state how the original debt accrued for this is only inducement to the action (Cro 1548, 1566) So if declaration omit to state to whom Pff. forbore & gave cred of payment the objection will be cured by verdict. 1 W. R. 172 Selw 57.

But upon special demurrer it has been holden not sufft. to state a consideration to forbear generally unless it be also shown that there was some person to forbear he forbore. 4 East 455 Selw 58.

The consideration of forbearance is not confined to forbearance ~~to~~ ^{from} suing by action for debt arising from a suit in Est. (Cro 8-68-) or the

Forbearance to sue

A promise to forbear suing for the residue of a debt in
consideration of a payment of a part is indebit in
consideration 12 Term 426

A promise to pay the debt of another Debt
may plead the Stat. Barred specially in bar 15 Term 425

Q

169

If A. agree to work for B. for such compensation as B. shall
deem right A. can raise nothing B. Stark 1763 1 M. & Sel. 290
Taylor vs. Pearson 4 Dall 111 3 Term 189.

Where credit is given to one person it cannot
be shifted to another 11 C. L. 301 5 Term 356

Assumpsit

1218

the party is liable only in Equity (Lear 71) has been
held to be a good consideration (Selw 55.9) So
desisting from ~~the~~ complaint before a Justice of
the Peace (Cro E. 844, 881 -) So forbearing to proceed
upon a capias ut ligatum (Cro E 909. Helst 19) So
staying the trial of a cause after issue joined (Cro E
868) is a good consideration for a promise to pay
costs incurred Selw 59.

Forbearance to sue against
Deft where originally there was no cause of action is
not a good consideration on which to found an
assumpsit. Cro E 13 were bound jointly & severally
in a bond (March 202) to C who released to A. after-
wards B in consideration that C would forbear to
sue him on the bond promised to pay it - Held
that the bond was discharged by the release (1 Inst 232)
to A & that there was no consideration whereon
an assumpsit might be grounded - vid also Cro E 803, 206
2 Salk 130 Lear 155 - 1 Term 180 where a bill was brought
by obligee against the heir of obligor alleging that
the heir ought to satisfy the bond
- Deft. dismissed because Pl. had not expressly alleged that
the heir was bound in the bond - 10 demurrer was allo-
wed. Selw 59. 50 in Cro E 26 1 Term 183 tra 94

The mere relation
of landlord & tenant is a suff. consideration for tenants
promise to manure a farm in a husband who manured
5 Pl. 873. Selw 51

Dalt came from A & B. A is sued also for compeller to pay
he can maintain no action agt B. for contributions -
for the just. shows no priority - A. should have placed
in abatement that B. was not joined 14 Johns R 322

Said in 6 branch 253 that a suit may afford to
sustain agt A & B on the same contract & the just-
agt A. is no less - Peter C.C. R 301. 1 Peter Bond R
290 a contract in error of simple contract is a bar
vid 2 Mos D 178

If a special contract is rescinded or performance prevented 2 CR 404
by def^t Off shall recover for services under it such sum
only as was agreed to be paid for the particular service
performed unless the conduct of def^t has placed Off under
some disadvantage when such additional expense or
trouble may be shown to increase the compensation
; Mand 123 4 do 285 1 Hott. N.R. 236 1 Hark. R 275
Parker C 103 10 Johns 36 Et. Off agrees to work for def^t a year
& before the time expires without fault on his part, def^t discharges him
in ap^t for work & labor he may receive the sum he is paid for a year
Rever. 15 C 2 396 4 Combs 375 1 H. 3 Ely 233 might also 568
5 do 405 - antea 1190

The consideration on which Debt promise is founded must
move from P^{ff} - for if P^{ff} is a mere stranger to the consideration
having done nothing of trouble to himself or of benefit
to D^{ft} he cannot sustain this action - Selw 61 Vent -
5 - the 59th - a promise by a constable to delay
the sale of property longer than the law allows is
in without consideration & void 2 Johns 193 - see 3 Branch
242 2 Johns 386 4 Call 269 for the considerations must
be such as the party undertaking has a power by
Law to perform or cause to be performed - for where
P^{ff} declared that he being bailiff to S. the D^{ft} in consideration
that P^{ff} would discharge him of a debt due to S. promised
he - after verdict & judgment for P^{ff} in Court below it was
reversed in B.R. because P^{ff} could not discharge a
debt due to his master 2 Lev 161 Selw 63 3 W 12

Considerations past & executed will not support a subsequent
promise unless the act was done at the request either
express or implied of the party promising, 11 Mod 11 Selw 64
as if the servant of A be arrested & S. without the
request of A locis the servant & afterwards A promises
to S. to indemnify him - the promise is void for the
bailment which was the consideration was past and
executed before Dy. 272 1 Sams 264 n. 4 Mol 106. where
it was holden that a mere voluntary covenant will
not support Assumpsit -

But where the act which forms
the consideration is done at the request of the party promising

If the party derives a benefit from the conveyance, it is
suff. for it is equivalent to a previous request. 1 Bound
264 n. / A pays a sum of money for B. & B. attend.
across to the payment. - But it must be covered in
the declaration to have been paid to the special instance
1 request of D^{ft} Yel^t 41 n. 1 - 16a R 583. 11 M^p 37
14 Johns 192 10 as 244 in a vice Ow. 1444

Promise to pay £20. for that thou shalt build me a house
or in recompense for a trespass done - led for the promise
does not go along with the conveyance. 181 Howd
5. 2 Leam. 30 Pow lere 348 Yel^t 41 n. 1

Assumps^t in conveyance that P^f had sold 20 Sheep. 160 E 1442
had become lent for D^{ft} 2nd / Dy. 272. / that P^f had
before that time sold & conveyed to D^{ft} in fee simple; Johns
R 87 - but then q 33. 2 Bound 1441

Case 10 Johns 284

P The overseers were legally liable to pay in such case
without any stipulated promise for by law they are obliged to
afford the necessary assistance - 3 Ror 253

Assumpsit

1228

the circumstance of the promise being subsequent in point of time to the consideration will not affect it. As if A request B to endeavor to procure a pardon for A & after B has made such endeavor A in consideration thereof promises to pay him a sum of money. This is said to be a good consideration. Moll 11. que pl. 6. sed que to the example vid.

It should be stated in declarations on executed considerations that they were done at the request of the party promising for the after revert the Court will sometimes imply a request yet after a judgment by default the omission has been noted perfect. Stee 933. sed que see 3 Burn 1671 where Wilkes Just. is reported to have said that the above case in Stee 933 was a strange & absurd case Solu 65.

If a person is under a moral obligation to do an act & another does it without his request a subsequent promise to pay will be binding. Burn 129. 147. 281. 24. where a pauper was taken suddenly ill & an apothecary attended her without a previous request of the overseer & afterwards the overseer promised to pay him a good fee for they were under a moral obligation to take care of their poor Solu 66 P.

A moral obligation is not suff. to revive an implied promise in law. As where the parish officers of A laid out money for a pauper of the parish of B who was taken ill in the parish of A

Moral Obligation

That an express promise founded upon an antecedent moral obligation is suff^t to support a discharge & is
Coup 288. 290 344 + C^o 945 E^o 945 2 Shou 184
Bell 147 - Contra 5 M 690 3 Bos 249 m -

Where the creditor agrees to take nothing unless a commission of bankruptcy is considered in whose of the bankrupt makes a new promise to pay the debt any thing being given such new promise is binding
2 Sergt on 314.

Selw. 68

10th 255

Dang. 101 m

Leant not be removed for his illness - it was holden that the Law would not receive an implied promise in the parish of B in which the pauper was legally settled to reimburse the money laid out by the parish of C - altho the parish of B - had notice of the pauper's illness - 2 East 505 - Selw. 6th. Vid 7 Johns 88 14 do 188 16 do 284 n

Le master is not liable upon an implied assumption to pay for medical attendance on a servant who met with an accident in his service - 3 Bos. 247.

When a debt or duty remains unremitted yet if the party's liability to be sued is suspended only either by the intervention of some rule of Law or transaction of a State or subsequent express promise with someone the suspension is reversed the liability. Where where the holder of a bill of exchange (2 East 16 n 7th 231 246 713) has failed in giving due notice of the dishonor of the bill to drawer - holden that a subsequent promise by drawer that he would see the bill paid would support an assumpsit. (Selw 67) So of a debt barred by the Limitation^{Act} (2 R 389.) - promise by bankrupt after his certificate to pay an antecedent debt. (Camp 544) So a promise by a person of full age to pay a debt contracted during his infancy and binding (3 R 690) - in this case some leaders declare on the original cause of action & also insert a count on the subject promise the consideration of which is stated to be the debt remaining unpaid. (q. v. w. the promises of the

Where goods are sold at one time on one & the same contract
 vendor cannot maintain separate actions for separate parcels of
 the goods 5 Johns 229 432. 2^d Ct & 433. Should multiply suits
 16 Johns 122. But where the demands are several
 and distinct separate suit may be instituted upon
 each - Ex. Service rendered at one time upon a distinct
 contract & also services rendered at a diff^t time
 upon a diff^t contract 16 Johns 137 But if after all these
 services are rendered & a security for all may be had ^{in one suit} but
 one suit can be sustained within the same species & Mass 493
 1 do 487

In ~~Wumps~~ on a note for specific articles 116 do 436)
 the highest market price after the note falls
 due & before trial is the rule of damages
 2 Cow 82 4 do 681 1 do 3 Hark 1155. 1 East 213 2 Br 62 2 East 211
 624 Gumpfre & Carroll 8 Taunt 540 1000 & Patterson 2 do 588
 Shepherd & Hampton 3 West 200 that the value of the article 4 East. 190
 when it sh^d have been delivered is the rule of damages

One whose stock has been taken under a forged power of
 atty^y may sustain an action against him who holds the
 proceeds of the sale 276 do 361.

et supra remine a vno Securitate. Lents not. ind 2 ^{Mo} 768)

If the subject promises conditional (21/11/11, 11b. difert. D
Laugborough, C.S.) it is incumbent on ~~it~~ to show the
condition performed. See 69-
4

to maintain & promp-
the agreement must be legal - i.e. A. It must not
contravene any rule of the C.D. the express provisions
of any Stat. (3 Leon 222) or the genl. policy of the
Law. (Selw 69) Y either the consideration or promise

A promise not to use evidence in a particular place
is legal. See 1596 in Contrasts) seems if the promise
is repugnant to public policy. in (146. 131 322. 7. & Contrasts
) 84M 89 Selw 73. 24M 17 16amp. N.P.C. 55
see also 64M 142

2- The agreement must not be contaminated with or arise out of an illegal transaction - Hence where an agreement was made between two parties (27th 454) subjects of Eng- for the sale & delivery of goods in payment for the purpose of being smuggled into Eng- it was

of having been money entrusted to him to obtain
a cure for negligence is the proper remedy &
Summit 268 Comp 414 & Be & 626 But if he
keep it money had & received 30 C L. 46

The measure of damages for the breach of an implied warranty
of title in the sale of a house is the price paid interest thereon and
the costs necessary by the owner against the purchaser on his recovery
if such a head price not the costs of closure 5 Mand! 535. Rule
on a suit for breach of contract the damages to be recovered will
be such as naturally arise from such breach if other damages
w^d be recovered they must be specifically alleged & proved. Ex case
of costs supra - 5 Mand! Supra - Sumner And C. 136 & Ex ttt 53
1 Sumner 566. 7 ds 152. 1 Sumner 517

holden that the reuer could not maintain an action for the value of the goods - id also 4 W 467 1 Inst 129 - 5 W 599 cited 1 East 98 Couch 341

To all contracts respecting insurance made void by 8 Geo. 1. 6 W 485. 2 H 131 379 - 2 Bos. 371 1 Taunton 136 -

Where one of two partners had been compelled to pay the whole of a lop on an illegal insurance (Perkins Ins 8) & the other partner had paid his moiety of the lop into the hands of a broker it was holden that this moiety could not be recovered from the broker by the partner who had paid the whole lop. Telio 76 Ter qu. 1 Bos. 3 - 12 East where it was holden that if money is paid on an illegal contract executed to a third person yet the person for whom it was paid can recover it of such third person.

If an officer permit a prisoner to go at large (8 East 171) in consequence of which the officer is obliged to pay the creditor the officer cannot maintain an action for money paid against the debtor for he cannot raise a defence of action by payment of money for another one account of his own breach of duty. - Lewis if officer has been guilty of no improper conduct. Peake, Car 143 - 10 L. 20

3 The agents must be fair and honest & not entered into for a prosculent purpose for fraud will vitiate any contract. - Ex. A. g. case 13 action of money for goods in advancement of C (3 W 551) - a secret agreement between B & C that C should pay

This action does not lie against an officer who contracts
as agent for the government. 18th 176 181.2. 2nd 11 State Ex. 139
18th 674.

A. promises to pay, the fraction of B \$50. for the use of
B. B. may sustain an action agt. A. 10th 388

A certain sum payable in collateral articles at a
certain price - the value of the articles not the sum
expressed is the rule of damages, 7 Cow 152 4/11
see 3 Ct. R. 58. Cont. & 5 Mand. 385. 2 Lom. R 235.
Rule in Penn. in accordance with 7 Cowen sup. Adels. 346
11 Sergt. R. 445 5 Nany Term R 85.

If taxes are illegally assessed & paid voluntarily can they
be recovered back? 2d 17 M/ 462 in Williams v
Pence 5 Ct. 190.

Exh. 11.

If one order good of a particular description & diff-
erent are delivered he must return them in a
reasonable time or pay for them 11 Ct. 300

Assumpsit

1224

Is a further sum for the goods was taken and - paid
on le- Ed also 2 Hk 763-4 Hk 166 4 East 372. Selw 778

4. If the agreement be of such a nature that the carrying it
into effect & enforcing it will give a sanction to immorality
an action can not be maintained upon it - of turpi
causa non oritur actio. Ex Lodgings let to Coft for the
purpose of prostitution - action not maintainable -
1 Esp. Cas. 13- 4-97- Selw 79- Scus in an action for
working &c of articles in which the prostitute appeared
in public places &c tho H knew Coft to be a prostitute
(1 Bos 346) that circumstance alone not being sufft -
H must be expected (Camp. N.P. Cas. 348) to have
received some benefit from Coft's prostitution

General Indebitatus Assumpsit

The genl. Indebitatus assumpsit is in the nature of an action
of debt & owes its introduction into genl. use to the
circumstance of Coft not being permitted in this action to
escape his loss (4 Bqr 95. 3 B. & C. 168. n) - Said in Selw 81
who cites Sed. 23. that it is a genl. rule that an indebitatus
assumpsit will not lie in any case but where debt will
lie - but the authority of this rule is questioned in 2 Hk
1008 & denied in 1 Cranch 439.

Indebitatus Assumpsit is
confined to cases of agreement - it will not lie upon a specialty
where the only contractual words are stated as the cause of
the liability of Coft is fully & entirely contained in the

Ind. assumpt. will lie on the implied promise arising/
promise of occupation of land. 4 Day 228 1800
233.

2.472

Ind. left. will not lie where there is a special
agreement. 2 Bost 99 / So where there is a special
agreement substanting & unassisted the action must be on that
If no recovery can be had under the common counts 11/11/11
18 do 327 7 do 172 12 do 274 13 do 94. 19 do 212
18 do ~

1 Day 10
8

Assumpsit cannot be maintain. on a running
account between merchant & Broker the proper remedy
at Law being an action of account 2 Camp 238
Hill-E 192. 2 Nov 781 hi per for 401 - that in evidence
too - no evidence can be given of an account current -
nor between partners until there has been a settlement & ascertained
balance 4 Ball. 434 Olson & Johnson

Absumpit

1225

specifically, & no circumstance is added but such as is provided
for by the specifically (1 Brande 332-1 (Poth. 208) but where the
specificity is only incident to the promise & a new consideration
interuenes, a presumpt will lie (1 Wash. 140 Solw 81m)

It is sufficient
to state in the declaration for what cause the debt or duty
became due that it may appear to the court to be a matter
whereon an assumpit may be founded & an omission of
this may be taken advantage of by writ of error (Cro & 200.7)
or in arrest of judgment after verdict (Cro & 6.31) but it is not necessary
to state the particular items constituting the debt - suff. if
declared generally that P^t was indebted to D^t for work
& labor &c. Carter 25. Hobbs 2 Lee 153 - Cro & 116 & 515
It is an action of indebit upon an account stated not
necessary to prove items but merely that an account
was stated for that is the cause of action - (1 W. 422n) the
accounting being the ground of the promise is transmissible
(Cro & 234) an account stated P^t is not obliged to prove the
exact sum laid in the declaration. Bull. 127 Solw 81m.

The general
common counts in Ind. libt. are those for work & labor
goods sold & delivered - money lent & advanced - paid laid
out & expended - had & received & an account stated - &
either all or some of these are usually carried to every
special assumpit where circumstances require it. So if
P^t fails in proving the special count he may resort to
the common counts (Baugh 571) unless the special contract
remains then still subsisting & in force in which case

When the price of goods has been paid and the account
received it looks as upon failure of consideration the thing was bought
for use 2d. 1/4 1/6 2d. 1/4 1/6

In an action for the price of a chattel Deft. may prove 2d. 1/4 1/6 432
a defect in the scale or that the article sold was of no value 2d. 1/4 1/6 31
either in favor of the action or in mitigation of damages 2d. 1/4 1/6 89 3d.
13 Linn 302 11 do 548 7 East 480 n 2 Taunt 2
1 Camp 190 - 15 Linn 211 n 2d. 1/4 1/6 in an action
on a specialty - 13 Linn 481 - 2d. 1/4 1/6 141 n that
if there has been any beneficial service D. shall recover
his whole claim and leave the other party to his own action
10th Reg. arg. 1 Linn 142 n 2d. 1/4 1/6 146 n 2d. 1/4 1/6
recover for the stipulated price of an article deft. may show
the true value in case of a breach of warranty as in case of
found 4 March 483 8 do 116 9 Bannister 259 4 Mans Ry 204

In an action on a written contract for a sum certain
the contract itself furnishes the rule of damages 1d. 1/4 1/6 1.
In Reg. a distinction is taken between suits for the price of the article
and suits upon a note or other contract given for the agreed price
in the first found in breach of warranty may be shown in the latter
not 4 March 116 - this distinction has not been adopted in 1d. 1/4 1/6 11 Linn
50 13 do 302 2 March 481 3 do 236 - (2d. 1/4 1/6 363

Assumpsit

102. 126. 127

It is excluded from recovering on the common counts. 2 East-
14. Pang. 23. 1. K. R. 357.

Ind. aft. will lie on a foreign judgment
(Pang 4th) for a heretofore due for breach of life lease (2 Lev 252)
for freight (Kent. 100) for tolls (2 Lev 252) - in other cases
in which it lies see Carth 95 Stra 747 - Pang 27. 155 1. K. R. 618
Solv. 82. in

It will not lie upon a bill of exchange by payee
against acceptor (Sect 23) for the acceptance is only a
collateral engagement to pay the debt of another - i.e. of
the drawer. So an assignee cannot recover of promisor
in his own name on a promise to pay it unless there is
a forbearance or some other consideration than assignment
1 Dall. 369 - Nor will it lie for a wage for a real
consideration is wanting 2 K. R. 69 - Solv 83

Ind. aft. will
not lie on a special contract (Fitz. 11. 208) until the
terms of it are performed - i.e. when performed -

Null. where a party declares on a special contract seeking
to recover thereon but fails in his right so to do altogether
he may recover on a genl. count if the case be such
that supposing there had been no special contract
he might have recovered for money paid or for
work & labor done. Null 129. Stra 688 - 1. K. R. 352 which
is 117.

In an action of ind. aft. for goods sold in 4 East 147. Ellenborough
C. R. aft. it appeared that the goods in question were to be

For money paid.

one who has a promise of indemnity against a debt
& is sued & compelled to pay it with costs may recover of
promisor principal interest & also the costs. 1 Cowen 515

A. agrees to build a house for B. for which B. was to pay him \$100.
when the work was completed. A gave C. an order upon B. for the
sum then to be paid & afterwards applied to B. for a part of the
money for his own use while B. refused to pay on the ground
that he had already given C. an order for the whole sum.
In an action by C. against B. upon the order it was held
that C. must prove that at the time B. refused to pay it the
work had been completed & as such was not the fact C.
could not recover the amount of the order of B. & Bann-
a Cro. 395 Charles & Denton The Aff. C. in this case claim that
the refusal of B. to pay it amounted to a promise to pay him
& upon this ground claim to recover. But it is no defense to an
action on a bill of exchange given for land sold that the vendor
has refused to convey 3 H. & N. 2 14 East 486 8 Camp 28

Assumpsit

big 2000 177

paid for in three months after the day on which the
bargain was made by a bill of two months so that
the action was prematurely brought on the 14th of
before the expiration of the five months & that a special
action of assumpsit was the proper remedy to recover damages
of debt such as loss of interest &c. for his not having put the
sum of three months again a bill for two months - and
4 East 5 and 6 11830 and 124582 See where there
is no express agreement for time for payment of the goods - but
the law takes the bill in payment - if it is dishonoured he
may sue the debt immediately for the consideration
has failed - 1 Esp. 65 & 4 R. 52 & 64 Talw. 85

It is entitled
to recover for goods sold & delivered when a bill is put for a
certain time if it appears a special memorandum
that the bill was filed on a day subsequent to the
expiration of the credit then the writ appears to have issued
before 4 East 5 & 6 Esp. 663 - See also 6 Coines 69. 2 Selw.
342 contra -

Where the contract is entire no action upon
it can be maintained until entirely performed or
until the time for performance has expired - 2 N. R. 61
Selw. 85

For money Reid this action lies if paid and laid
out or expended for the use of another with his consent either
express or implied - as where a surety is compelled to
pay the debt of his principal (8 R. 310 and 2 R. 105 where
it was said that no action would be maintained at law

For money paid.

Where a surety pays the debt of the principal the creditor is bound to assign over the security to the surety.
2 Johns R 496 arg. - 2 Kern. 608

Payment of a money debt in collateral articles, rec'd as money, will support a count for money paid. 7 Loui 862.
ind 362 R 462.

Even though the surety have given a receipt for the money the credit not being conclusive 2 R 371

An officer paying an ex. or Dep. without his request cannot maintain a demand on the officer for money paid 3 Johns 434 14 do 87 7 do 159 319 429—

A surety may sustain an action against his principal as often as he is demanded & Indorse of a note may sue the principal so often as he makes a payment for money paid - 6 Mond 289 & the accuracy in the first suit is no bar to the second 2 Wend 374

Assumpsit

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where the surety had paid the principal's debt. *Id.* 508
Solv. 91 n. Money paid by the surety may
be recovered from the principal tho' paid upon an unlawful
contract which might have been avoided by the principal -
1 N. H. 139. 4 Solv. 481. -

If one of two sureties has been obliged
to pay the whole debt he may recover a proportion of
his co-surety - not necessary to prove the insolvency
of the original debtor 2 Bos. 268. *Id.* where the co-surety
had been excused upon to become bound by the surety
paying (2 Ex. 478) no action can be maintained
against him - Solv. 84. 2 N. H. 369. *

So by law against their principal
for the recovery of such sums as they as law have been
necessarily obliged to expend. 5 C. & L. 171.

So where one has
been obliged to pay money in consequence of which
another is discharged from a demand or cause
of action - the party paying may maintain an
action against the party so discharged - 8 N. H. 208. *Id.*
Solv. 88. *Id.* where it is said the payment must be made
with off own money - which I take to mean nothing
more than this - that if off has sustained no inconvenience
or damage from the payment no action can be
maintained - *Id.* where if he has paid out - *Id.* 191.
at the request or consent of off either express or implied.
Id. 191.

But the mere circumstance of one person

For money paid.

Rule. Where one pays money to another on my account without my request a promisor will not lie without an express promise to pay it 13 R 20.

A collector of taxes cannot sue a promisor to recover them but must resort to his warrant
2 Root 84 and 1 Root 470 / will lie agt
the administrator 2 Root 61-

A & B were indebted to the R. S. A gave his bond for the debt & C signed as surety. Then A died & C lost his bond the bond & surety B for money paid for his use stating the promise to have been made by A & B. in the life time of A. held that proof of paying the money for the surviving partner after the death of one did not support the declaration on an implied promise by all - that the claim of the R. S. agt. A & B. was extinguished by the bond of A & B. & that C. had a right of action against A. only - who signed the bond 2 Johns R 219 Ken n Goodrich

Decide in 15 M 34 that in some cases a promise is considered as paid altho there has been only a promise to pay it - as where the declarator has a right to compel payment on a note & has in his favor the evidence of the promise to pay which may exist after a judgment to the prejudice of the assured

A principal

1220

having received an advantage from the payment of money by another is not suff. to raise an aft. against the former for consent or implied is absolutely necessary to support this action. Selw 49. 18th 20

So it was held that a broker who had contracted (8th 610) with third persons for the sale of at a future day by authority of his principal who afterwards in consequence of the rise of stock refused to make good the bargain could not by paying the difference to the persons to whom the stock was sold maintain an action on an implied aft. against the principal for the amount of the difference so paid. Selw 49.

So if any one in consequence of his own mistake or negligence in transacting the business of another is put to any damage the law will not raise an implied promise on the part of his employer & East 392. So if damage be occasioned by breach of duty - tho for P'st benefit - & East 171. Selw 90. Lint.

In an action founded on tort against several & one is obliged to pay the whole damage he cannot maintain an action against his co. deft. for a moiety - no contribution between joint wrong doers - (8th 186) See in case of a joint judgment against several & one in an action of trespass - 1 East 220. vid 2 Cases 263

For money had and received.

a q. shall that he assumes a said certificatory which is
given by a Court having competent jurisdiction?
that it shall not vis. Ex p. s. 3 Hk 125. } 15th 742

£288.9

tho this is an equitable action yet it cannot be substituted
for any mode of relief in Ch. Day 132.

Ex p. ...	3
2 Bur	1102
18 th	39
18 th	27

In an action for money had & received to off^r
use it is no defence that Def. has a distinct
claim agt. Off. for an equal or greater claim
unless there has been an agreement between
the parties to apply the latter claim in
satisfaction of the former (A. N. 39)

Will action for money had & rec^d where deft has rec^d collateral
articles in lieu of cash for off^r property? 7. Pick Shelton
692. 693 & East 349 (7 lawes 662 701) in 364 462
2 Hk 482. 110 Hk 497. 1101

If three are bound jointly to another in a bond & two pay the amount they must bring separate actions against the third for the recovery of their respective moieties of what the third was liable to pay & cannot join in the action - 3 Bos. 235
5 Esp. C. 194 Selw 90-

For money had & received this action
lies & is founded on all the equitable circumstances of the case between the parties - Off. must show that he has Equity & conscience on his side - As. 1. If I pay money to one who claims an authority to receive it, when he has no such authority (2 S. 41 - 5 W. 606) & after wards I am compelled to pay it to the person lawfully entitled to it - this action lies in my favor against him who has unlawfully received the money
Selw 91. 2.

If A be indebted to B. & pay such debt to B's letter the letter of a person, suing A - in B's name but without B's authority - B may notwithstanding recover the debt in an action against A whose remedy is against the letter - 13 W. 62.

Decided in 1 pay, 10 that if A convey land to B. & B convey the same land to C. & receives the money of C. for the land A may maintain, Ind. left against B for money had & received of C. to A for the use of A - - - An action for money had & received will lie against a sheriff, for money received on ex. - but there must be a species statement of

For money had and received.

In an action on a warranty for defect in a chattel it is not necessary for ~~the~~ to show that Def^t made the warranty in express words but any representation by def^t of the thing sold as a direct & express affirmation by him of its quality & condition showing his intention to warrant is suff^t 19 Johns 190-20 do.

2. To special find. Def^t will lie for money ~~by~~ mistake in a settlement. Root 148

Espr. 2.
Sed. 28

Where goods or money is deposited with one person for the benefit of another upon a persecut condition the deposit is not revocable - Sam. if there is no previous consideration. Black case 2 Sam. 30. 31 Dy 49
Mellon v. Temple 4 Burr. 2239 Whitfield v. Denage
2 Bos 279.

1237

bad sum[?] its bad [?]

parts in the dectate 2 W. 172 & 2nd 4 W. 326. 3 John 183
2 Bay. 369. 3 Cranch 337. 2 4 John 240

2. Where a person has
usurped an office belonging to another (2. W. 260) and
taken the profits thereof they being certain & settled.
this action lies in favor of the party aggrieved. - Sums
if the profits received are mere gratuitous gifts to the
intruder. 6 W. 681. Selw 91-

But this action will not
lie for the profits of a currency until off has obtained possession.
13 W. 399. 2 B. 1857 S.C. 17 W. 403-

3. Where money to which
there was not any ground of claim in conscience has
been paid under a mistake the party may recover
it back in this action (Selw 92. (Dall. 147) As where a
being indebted to a bankrupt paid the debt to the
assignees without settling off as he was entitled to do
a sum of money due to himself. - holden that he might
recover the sum which he has neglected to set off
in an action of Tre. left against the assignees for money
had & received 1 W. 285. vid also 4 W. 432 in. n. 2

But where
money has been paid under compulsion of legal
process in an action in which the party might
have defended successfully if he had been prepared
with his evidence it cannot be recovered back
in an action for money had & received the such
evidence be produced at the second trial as sheers

For money had and received.

A. *res. qu.* was not the first just secured or ~~settled~~ the ~~settled~~ merits of the case be tried in consequence of want of jurisdiction in the inferior Court? If so there may be *Ans. d. qu. Ex p. b. Bull* 181 Comps 419 249 219 2 Bull 1805 / but not correct *Ans. d. qu.* cited to the *qu. d. qu.* principle -

If a security is taken for a present debt & money is included in such security & the security is avoided a plaintiff may be maintained for the original debt 19 Johns 150 3 Comps 119 174. Bl 462 15 R 153 but if the binding & various agreements are contemporaneous acts of the security is avoided *res. qu.* whether an action can be maintained to recover the original sum lent without a subject *res. qu.* to pay it

Ex p. 2

2 Bull 1012

A. paid B. a sum of money for a bill of exchange once broken who failed before it could be tendered - holds that A might recover back the money so paid - for the consideration had & paid Bull 407 131 Stra 407

Ex p. 2

Palm. 364.

Mumpsit bnd 1232

that the other party was not entitled to recover it in the first
 78 R 269. But see 2 Burr 1009. contra Sedgwick 12 H. 61/2/14
 Selw 92 - n 14 Nov 176

Where a party pays money to another with a
full knowledge or means of the knowledge of all the facts of
 the case he cannot recover it back again on account
of his ignorance of the law, 2 East 469. 3 B. & P. 520 / See if a
 payment has been made not with a full knowledge of
the facts but under a blind suspicion of the case - if paid
 unjustly it may be recovered back 2 East 47. n. id 8 Ex. 6
 84. 3 B. & P. 520 -

Money due in point of honor & conscience
 tho a person is not compellable to pay it yet if paid shall
 not be recovered. 2 B. & P. 824. Selw 95

4th Where money has
 been paid without consideration or on a consideration
 which fails an action for money had & received will
 lie to recover it back. 2 W. 1073 1 W. 131 65 - Camp 197. 1 W.
 732 6 East 241 - and 3 East 10. 2 W. 300 -

An action for
 money had & received will not lie against a mere
 secretary who has not actually received any part of the
 consideration altho he has signed with a grantor
 in signing a receipt for it 2 W. 200 and 5 Solms 176
 See examples under the division 4th and 6th W. 606 - Darg
 654. Hise. 95 Wadg. all. Land & Sea 85 Selw 96.

5th If any
 undue advantage be taken of a person's situation

For money had and received.

Where one pays money to obtain part of goods he thinks he is entitled to have the
 cannot otherwise obtain such payment is compulsory 14 C.L. 14

Exp. . . 2
 2 Bur. 1012
 237 763
 14 C.L. 14

Where money is paid for land & the title fails
 it cannot be recovered back unless the deed was
 one with covenants on these have been found 100 yd.
 4% claim in case of personal prop^y. The - But want of
 title is a good defence to an action on the land given for the
 purchase money (Sout^h 456 3 Stark 1614 n 2 Wheat 13

This action lies to recover back money of which a person
 has been defrauded by cheating or undue ^{property} Caut. Exp 5. Bull 130
 10 yd. that the owner shall recover the money in the
 hands of a 3^d person if he received it as such for. Exp 5.

2 B.R. 1073
 36 Bl. 65
 Court - 790
 18 Bl.

Money advanced for one purpose & applied without authority to
 another may be recovered back as money had & rec^d 4 low 607

15 Moul 1113
 5 Tinn. 331
 6 Low 2131
 8 East - 2192
 3 B.R. 179-

Where there is a mistake in a settlement money had &
 paid will lie / 1 Moul 511 / not necessary to have a special
 action -

Cant 197
 8 East. 518
 2 Bl 12 1073
 12 Bl 65
 8 East 241
 13 Bl 732

money obtained from him by compulsion such money may be recovered in this action for money had & received - Ex. 11. secured goods without any agreement for interest but on redemption Ex. 11. compels him to pay more than contracted interest. Held that this action would lie to recover the ex. 11. for the rule solenti non fit injuria holds only where the party has a freedom of exercising his will. 11 R 153. (1815) (Qu. was not the detention of the pledge a fraud upon pawnor? vid. Selw. 98 in n. -) as Daug 727- 1871

5th Where contracts or transactions are prohibited by positive stat. for the protection of one set of men from another if money is paid by the one who from their situation &c. are liable to be oppressed & imposed upon by the other the party paying is not considered as standing in pari delicto & after the transaction is completed may bring his action & defeat the contract. (Selw 100) or a creditor refused to sign the certificate of a bankrupt unless a sum of money was given him by a friend of bankrupt - (Daug 698. Bull 133- 2nd 25) - the friend gave the money & in consequence thereof creditor signed the certificate - holden that it might be recovered in an action for money had & received Selw 101 - - to a unusquis contracts - parties not in pari delicto Daug 1171 - where a contrary doctrine in Shin. 411 & 22 was denied. see also Camp 199. to same effect - L. 257

(General rule - that in cases of

Where the owner of goods sold at auction or any other
person for him attends specially to bid upon the goods to
enhance the price it is a fraud on the real purchaser
Chas D 216 / So if there is an agreement between
two that one option shall not bid it is a fraud
upon the seller 6 Johns R 194 / So an agreement between
two to divide the profits of the purchase which one
of them sold off is fraudulent 8 Johns 444. So of
sales upon ex^m 13 Johns R.

1
On an action for the price of a machine ^{gearing} ~~with a mill~~ sold by
A to B for which a note payable to C. was taken & the
machine being shown to be worthless it was held that
C. could not recover on the note there being a fraud or
misrepresentation, nor on the common count for the gearing
(the that was valuable) inasmuch as he never sold the
gearing 9 Maud 40

Assumpsit

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payments to a known agent the action for money had & ought to be brought against the principal (upon an assumpsit transmission to pay the factor for the use of his principal the factor may bring the action in his own name (4 M. 263) unless in special cases as under ratification or malafide. Bull 123 4 Burr 1984 - 4 M. 553 Camp 204.
- Also if money be paid by mistake to the person agent & placed by him to the account of his principal money but not paid over new used it gives fresh bills accepted or further sum advanced to the principal in consequence of it the action for money had & received will lie against the agent Camp 566. So if there has been any illegality in the transaction on the part of the agent this action may be sustained against him tho he has paid the money over to his principal - Selw. 101 n 88 1 Camp. N.P.C 396)

Again where one has offered to pay a sum of money for the use of the poor of the parish in order to avoid a prosecution by a magistrate which offer the magistrate accepted & the money was paid by the party to the master of the workhouse for the use of the poor money countermanded the application of the money before it is so applied & recover it back in this action - 9 East 29 Selw 105

7th where money has been paid by one of two parties to an illegal contract to a third person for the use of the other party an action for money had & received will lie against such third

"1" Dec in Sitchfield Monday Sept. 17th 1849. San Francisco Bacon

Rule if one have paid money on a contract contract contract bono
more he may recover it back bono where paid on
a contract forbidden by positive law of so making
in se 7 Johns 441 2 Bl. R 1673 7 BR 535
11 Johns 29 7 East 449 12 do 225 4 Bourn
165 5 Johns 334 n - The distinction appears
to be taken between contracts immoral or criminal
of such as are simply illegal & void - courts
refuse their aid in bono of the first sort of give
it in the last -

If A agrees to give B money for procuring an illegal
act B. cannot recover the money by action
& if paid - cannot recover it back Bull 16.132
4 Johns 426 2 M. & R. 1 Parker & 128

Bong 467
38 R 266

1 East 97
7 East 449

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to recover it. As where money was paid by an under-
writer to the broker of the assured for his the assured use
on an illegal contract of insurance (1 Bos. 3) it
was held that assured might recover it of the
broker. broker could not insist on the illegality
of the contract as a defence the obligation on him
arising out of the fact of the money having been
received by him to the use of P^r which created in
law to pay (1 Bos. 296 the money may be stopped while
in transitu) quæ re cante

But where money does not
appear to have been actually in the hands of P^r (3
East. 222) but only an account stated between him
& the other party to the illegal contract in which
P^r has given credit to such party for the money the court
will not sustain P^r's demand for it, so saying they
would compel the ex^r of an illegal contract. Selw. 107

P^r where money is paid by one of the parties to an illegal
contract to the other in a case where both parties may
be considered as particeps criminis one action cannot
be maintained after the contract is executed to
recover the money back again for in pari delicto
potior est conditio defendentis. 8 M. & W. 575 and quæ id
7 M. & W. 535 where money paid on an illegal wager was
recovered back after the event on which the wager
proceeded had terminated against P^r. and quæ id 1 East
98 & East 382 & M. & W. 575. 1 M. & W. 65 Camp 790

A. agreed to give B \$1. per day for his services, in an action
B. vs A. to recover the amount A. in mitigation of damages, may
show that the work was not properly performed - of such evidence
is rejected A. can sustain no suit as B. for damage he
must bring over 14 Johns R. 377 13 do 302 8 do 1153
9 do 234 12 do 347. & So in an action for the price
of a chattel Def^t may prove a deceit in the sale
or that the chattel was of no value & defeat the action
or if the circumstances produce a partial diminution - see 3 Ct 446
only he may show that part in diminution of
damages, 13 Johns 302 1 Comf 190 8 Johns 1153
So in an action on a bill given for the price of
goods sold under a warranty the breach of the
warranty is an answer to Pl^t's demand if Def^t -
tendered the goods back 2 B. & M. 2. 7 Johns 381 n 381 n 6.

Sed qu. unless the action be on a quantum in suit or if on
a special contract to pay a specific sum unless notice of sale
defence be given - 7 East 1183

said 7 East 1185 n. 1. that if no beneficial service there
shall be no pay - but if some benefit tho not to the
extent expected it shall go to the Pl^t's amount of
Pl^t's demand leaving Def^t to his action for the
negligence, see 1 Comf 37, Peake 659, 2 N. R. 136
1 Comf 190 - 661 477

So a premium paid by a foreigner on an illegal insurance the policy is illegal by the law of this country only - it cannot be recovered *Lamb. 3 W 266 3 Bos 35*

Qth Where the contract is not malum in se nor prohibited by any positive law but is of such a nature that it cannot be put in force for policy because it would be inconvenient that the merits of the question should be publicly discussed - in such case while the contract remains executory money paid upon it by one of the parties to the other may be recovered - *2 Bos. 130. 4 Cr 71 1 Cr 468. 71 1 P 89* as to distinction between executed & executory contracts *Lolo Peak 224 3 Cr 253*

1) th The proprietor of cattle wrongfully detained damage feasant who has paid money for the purpose of having his cattle redelivered to him cannot recover that money in an action for money had & received for the law has pointed out two specific remedies for trying the question of this kind - replevin & trespass & permitting any other would impose great difficulties upon & oft by not apprising him of what he was to defend. *Comps 414* - neither will assumpsit lie for detaining cattle detained damage feasant if tender was not made till after impounding. *1 Comps 414 P. 285* See also *in in*

But where an action for money had & received was brought against an owner of the pack (Bull 131 cited in *Comps 417 & 1 W 387*) to recover money in his hands which

If a party pays or secures a debt when demanded or
instead of contesting it is alleged he is afterwards estopped
to deny the legality of it 14 Ep. 6 11 140 84. 279 2 Ct. 26
286 - See also as to the extent of this doctrine - 25 L. 407 that
if paid after suit threatened understandingly & without fraud it is a
payment under compulsion & legal process & cannot be recovered
back 1 Ep. 6 279 6 Ct. 679

25 13 1/2 134 age

in 2 Ben 1012.

B. 10 76. 31. 17

c. but if P. would rescind the contract entirely he must do
it within a reasonable time. 13 1/2. 136 per Bull. 1.

If one agrees to make an article of certain materials
& make it of better use, he cannot charge more than
the stipulated price and have a return of the
article 14 C. L. 386 -

In actions of assumpsit on the sale of goods per modum vendendi
goods of a certain description there must be an express
or necessary implication of assumpsit 13 John 24 76. 129

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had been levied by a rule of Plff goods on a conviction which was afterwards quashed. Held that the action was maintainable for the clear money produced by the sale. Plff might waive the tort. Selw 112. n. id also 45 BR 485 487. 5 East 122 4 BR 583

11th Where the contract is legal Plff cannot on the general counts in ass^t. while the contract remains open - his only remedy is on the special counts
2 H.L. 3, R 135 3 E. 1, R 42 Doug 24 n Cowp 818. 2 East 145 - and
ind 1 Burr 24. 1 Dalt. 428. Cases where the contract is rescinded by the original terms of it no act remaining
to be done by Def^t. Plff may recover back his money. 1 BR 133. D/E
So where a contract is not rescinded into ass^t. by reason of
some negligence of one party (3 BR 181) the other not having
done anything in part ex^{ch}. of the contract may rescind &
recover back his money when by so doing the contract will
be rescinded ^{in toto} & the parties placed in status quo 1 BR 357
Selw 114 - 5 East 449

12th In an action for money loaned & received Plff cannot recover unless it be against conscience that Def^t should retain the money. 3 Burr 1354 1 BR 390, S.C. Selw 114
- In Virginia an endorsement of a promissory note cannot maintain an action against a remote endorser per want of privity. - 1 Branch 298 3^d 212. 3^d 2 If a negotiable note be given for a simple contract debt no action can be maintained on the original contract unless the note is proved to be lost or produced & cancelled at trial -
1 John 34, 3 Branch 311 -

Off. agreed to work for A^t 1 year at \$10. pr. month. he work-
ed 10 mth. & on Saturday said he w^o-work no longer & left the service
on Monday following he returned & offered to resume the work
which A^t decline- Held that A^t was not bound to receive
him & that Off. could not recover for the work done & found 63
and also 12 when the 13 do 94 354. 4 Nov 606 27 & L 190
Do 2 Starkie R 356 cited & found 63 Off. refused as dinner was
ready to go about a mile with the Revue. they ordered so to do
by his master & therefore his master dismissed him- held
that he could not recover for the services performed
they being rendered on an entire contract not completed
when thus dismissed-

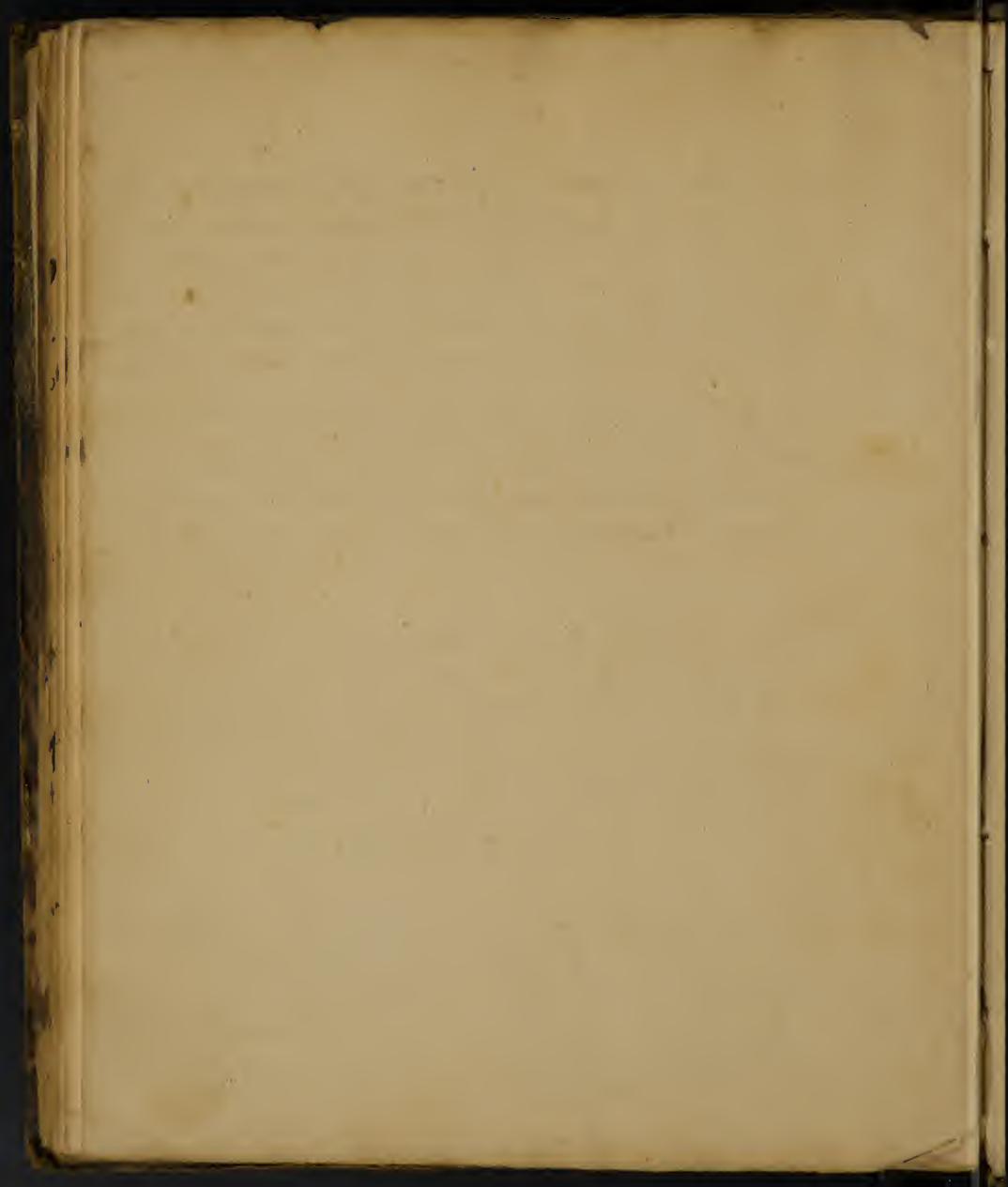
A agreed to saw 50000 feet of boards for B. he sawed a part
& then abandoned the contract- he a suit by B. for damages in
not performing the whole contract it was not permitted to set
off the value of his labor actually performed under the contract
& found 606. Montag. 17. 2d ed 355 on the principle that not
having performed the whole contract he sh^d not be permitted
in any way to recover for a part performance

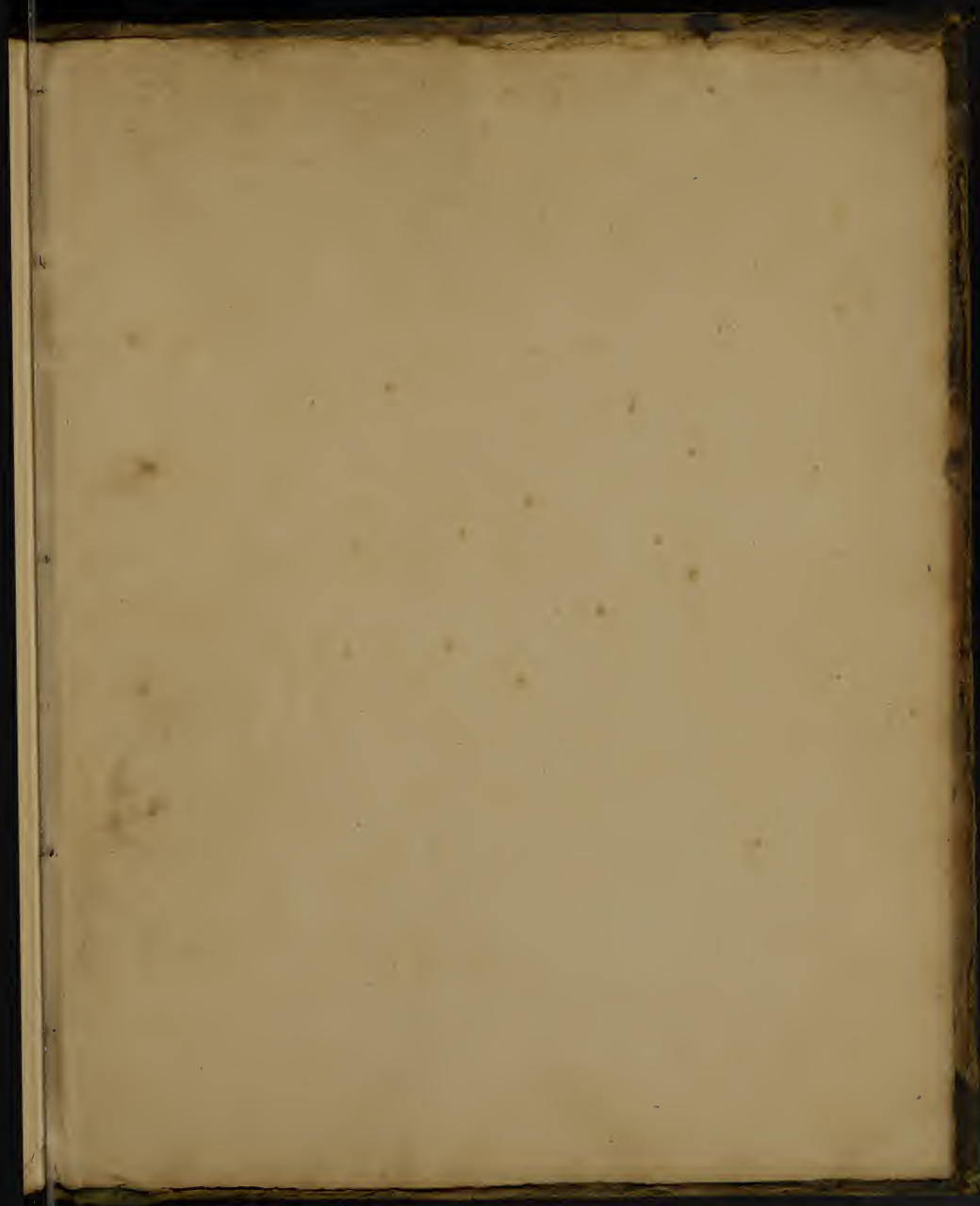
In debt for work & labor on an implied contract on the plea
of non assumpsit A^t may prove that the work was done
under such circumstances as to show there was an implied
contract but cannot show misconduct except for the
same purpose- he sh^d have dismissed Off 256 L 535

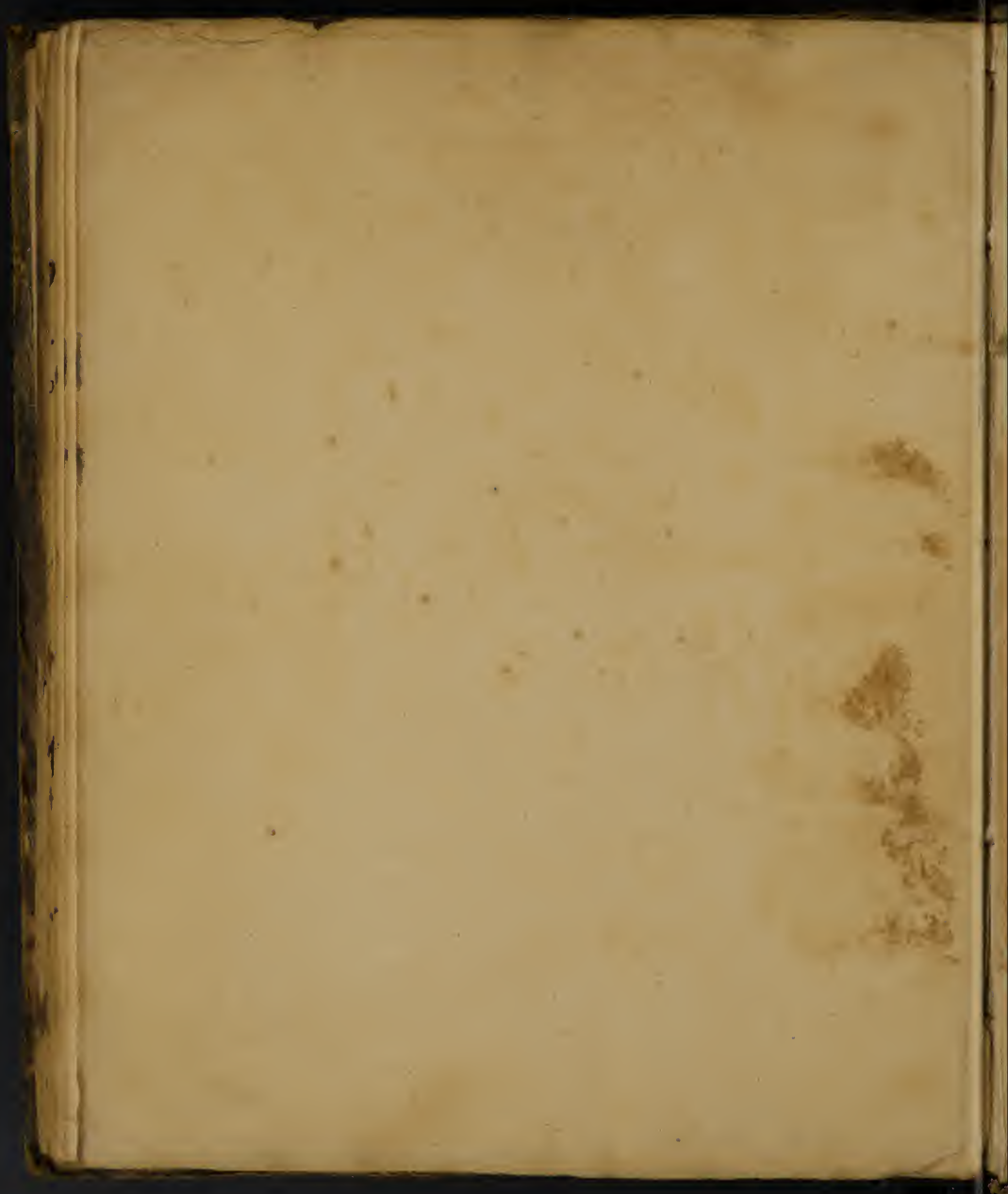
Handwritten text, likely a letter or document, written in cursive script. The text is faint and mostly illegible due to fading and bleed-through from the reverse side. It appears to be a formal or semi-formal communication, possibly dated in the 18th or 19th century.

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G. H. & F.
Donald J. Warner.
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